Supreme Court, U.S.
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No. 10-
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In the Supreme Court of the United States

Denny C. Cormier,
Petitioner

v.

Frank D. Horkan, *et al.*
Respondents

On Petition for a Writ of Certiorari
To The United States Court of Appeals
For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW (Rule 14.1(a))

1) Whether the Rooker-Feldman abstention doctrine impermissibly infringes the "Redress of Grievances" clause of the First Amendment to the United States Constitution while further impermissibly infringing civil rights provisions of the Thirteenth and Fourteenth Amendment thereby barring adjudication of 42 U.S.C. § 1983 civil rights cases?

2) Whether the Eleventh Circuit has erroneously interpreted the Rooker-Feldman and other abstention doctrines, and federal statutory laws, to bar prosecution of civil rights lawsuits originating in state courts, thereby impermissibly infringing the First, Thirteenth and Fourteenth Amendments to the United States Constitution?

3) Whether opposing parties and a state court judge are liable for suit in a 42 U.S.C. § 1983 civil-rights action when the complaint alleges and proves they proceeded in state court after the state action was properly removed to federal court and before it was remanded, contrary to 28 U.S.C. § 1446(d) and extensive case law?

PARTIES TO PROCEEDING

1. Petitioner, DENNY C. CORMIER, is a physician and resident of Newport News, Virginia.
2. Respondent, NANCY CORMIER, is a resident of Eustis, Florida and ex-wife of Petitioner, and an actor in this civil rights lawsuit because she was following the current custom of local law and conspired to violate Petitioner's civil rights.
3. Respondent, ANN V. BUECHLER, is a resident of Eustis, Florida, and mother of Respondent, NANCY CORMIER, enjoined the state lawsuit against Petitioner at time of final judgment in Georgia on August 1, 2005, following current custom of local law, and she is therefore an actor in this civil rights lawsuit.
4. Respondent, FRANK D. HORKAN, is a Colquitt County Superior Court Judge, presiding in more than one county, and who proceeded with a state trial during a proper federal removal, and is an actor in this civil rights lawsuit.
5. Respondent, DWIGHT MAY, was an attorney of Respondent, NANCY CORMIER, while also acting as treasurer and re-election campaign manager for Respondent, FRANK D. HORKAN, both of whom have been long-time business and law partners, and is therefore an actor in this civil rights lawsuit.

6. Respondent, GEORGE ERVIN "SONNY" PERDUE III, is the Governor of Georgia, who resides in Atlanta, Georgia, and is the responsible party for *ultra vires* actions on the part of state judges and other public officials presiding in more than one county, and he is therefore an actor in this civil rights lawsuit.
7. Respondent, JOHN B. ALDERMAN, is the chairman of the Colquitt County Commissioners and represents COLQUITT COUNTY, GEORGIA, which provided courtroom, jail facilities and other judicial services for Respondent, Judge FRANK D. HORKAN, during his *ultra vires* conduct, and therefore is an actor in this lawsuit.
8. COLQUITT COUNTY, GEORGIA, is an actor in this civil rights lawsuit because it lacks Eleventh Amendment immunity and provided essential judicial services for Respondent Judge FRANK D. HORKAN, during his *ultra vires* conduct, and is therefore an actor in this civil rights lawsuit.

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JURISDICTION

On September 23, 2010, the Eleventh Circuit U.S. court of appeals rendered judgment vacating the ruling of the district court's orders and dismissing the Petitioner's complaint without reasoned opinion based upon the Rooker-Feldman abstention doctrine. Hence, this Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES

The following federal statutes are applicable for the instant case including 28 U.S.C. §§ 1446, 1447; 42 U.S.C. § 1983; 42 U.S.C. § 1994.

STATEMENT OF THE CASE

(i) Proceedings in the Courts

Petitioner filed an Application for Discretionary Appeal before the Georgia Supreme Court, April 11, 2005, pursuant to the Family Law Project, Divorce/alimony Project, and pursuant to state Case #6:04-CV-19, in order to challenge errors by the lower state court and review his Motion for Declaratory Judgment, which had been denied and overruled without reasoned opinion by the lower court. However, the Georgia Supreme Court declined to review Petitioner's Application for Appeal, Case # S05D1239, on May 12, 2005 without reasoned opinion.

On May 24, 2005, having exhausted his state court remedies, Petitioner therefore re-removed the issues and claims surrounding his Motion for Declaratory Judgment, involving a Liberty Interest and a constitutional challenge to the Georgia Alimony Statutes O.C.G.A. §§ 19-6-1 et seq, to the United States District Court, Middle District of Georgia, Case #6:05-CV-26, having previously reserved his constitutional claims by asserting a Jennings-England reservation. (See England v. La. State Bd. of Med. Exam'rs, 375 U.S. 411, 415 (1964) and Jennings v. Caddo Parish School Bd., 531 F.2d 1331 (5th Cir.1976).)

While the state case was under removal to the district court, the state trial-court judge, Respondent Frank D. Horkan, without jurisdiction issued an *ultra vires* ex parte order on June 14, 2005 (R6), in

violation of 28 U.S.C. § 1446. During said ex-parte hearing on June 14, 2005, and outside his judicial capacity, Respondent Frank D. Horkan ordered Petitioner to pay an unlawful debt to opposing counsel, Respondent Dwight May, sums of money in excess of $3,000 during a proper removal to the district court. Respondent Horkan also scheduled further hearings in his *ultra vires* order of June 14, 2005.

On July 5, 2005, Petitioner submitted to the state trial court a Writ of Mandamus to advise the trial court to conform to Federal Statutes, whereupon Petitioner also submitted concurrent Writs of Mandamus to the Georgia Supreme Court and to the Federal District Court, all of which were ignored. On August 31, 2005, Petitioner submitted an Application for Appeal of ex parte Final Decree ruling of August 1, 2005 to the Georgia Supreme Court, and on September 29, 2005, Petitioner was granted an appeal by the Georgia Supreme Court. However, in its subsequent ruling, the Georgia Supreme Court erroneously held on June 26, 2006 in Cormier v Cormier, Case# S06F0442, that a state judge was not required to halt the state case during a Federal removal in violation of 28 U.S.C. § 1446:

> "On June 13, 2005, the trial court entered an order denying Husband's second effort to remove the case to federal court, which informed all parties that the case would proceed to a pre-trial hearing on July 7, 2005, and that the trial would be held on August 1,

> 2005, in the Colquitt County Courthouse."

At the time of said state ruling, neither Petitioner nor his counsel, Mr. Stephen Mackie, were aware that Respondents Horkan and May were engaged in a political quid pro quo (R5). At no time did Respondents Horkan or May disclose their political involvement during said Federal removal to Petitioner nor to his counsel, nor did they disclose their conflicts of interest at any time whatsoever. On July 25, 2007, Respondents obtained an order to domesticate the Georgia Final Judgment order of August 1, 2005 to Virginia (R8), thereby engaging in unlawful interstate trafficking of a forced-labor peonage contract under coercion, duress, threats of false imprisonment, and under color of law.

On June 2, 2009, Petitioner filed his Verified Complaint, Case # 7:09-CV-68-HL, with the district court as a continuing tort against Respondents. Thereafter, on June 17, 2009, the Georgia Attorney General's office filed a Motion to Dismiss and Motion to Stay the trial on behalf of Respondents Horkan and Perdue. Petitioner replied to these Motions on July 1, 2009. On July 30, 2009, Respondent Alderman filed a Motion to Dismiss, a Motion to Stay and a Memorandum in support of the Motion to Dismiss with the district court. Petitioner responded to this Motion on August 5, 2009.

A "Motion for Partial Summary Judgment Against Defendant Horkan" (R4) was filed by Petitioner on August 4, 2009 which was not reviewed by the district court. Respondent Dwight May filed a

Motion to Dismiss on July 30, 2009 and Petitioner responded on August 17, 2009 and filed a supplemental Memorandum of Law (R3) regarding the relevance of Monell v. Department of Social Services, 436 U.S. 658 (1978) as it pertained to Respondent John Alderman and Colquitt County, Georgia. After receiving summons on August 5, 2009, Respondents Ann Buechler and Nancy Cormier filed a joint Motion to Dismiss on August 16, 2009, to which Petitioner responded on September 18, 2009 after an extension was granted by the district court on September 14, 2009. On February 11, 2010, the district court issued an Order (R2) on Motions to Dismiss Petitioner's Verified Complaint and closed the case with its Final Judgement on February 12, 2010, and Petitioner's "Motion for Partial Summary Judgment" was dismissed without reasoned opinion. Petitioner timely filed his Notice of Appeal to the U.S. 11th Circuit Court of Appeals on March 9, 2010, Case No: 10-11089, to appeal the Order and Judgement of the district court issued on February 11 and 12, 2010 respectively (App. B,C). On September 23, 2010, the U.S. Court of Appeals barred review of the instant case and vacated the district court ruling by invoking the Rooker-Feldman abstention doctrine (App. A7), even though the issues presented had not previously been adjudicated in federal court, based upon the supposition that the Petitioner's case was allegedly "inextricably intertwined" with the state case and despite the Petitioner having asserted a Jennings-England reservation of his federal claims.

(ii) Statement of Facts

No facts have ever been in dispute. All facts center around judicial proceedings and court orders. Briefly, Petitioner is a physician and resident of Newport News, Virginia. Respondent, Nancy Cormier, is a resident of Eustis, Florida and ex-wife of Petitioner, and an actor in this civil rights lawsuit because she was following the current custom of local law and conspired to violate Petitioner's civil rights. There were no minor children involved in the divorce proceedings and therefore custody and child support were never and are not at issue in this lawsuit. Respondent, Ann Buechler, is a resident of Eustis, Florida and mother of Respondent, Nancy Cormier; Respondent Ann Buechler enjoined the state lawsuit against Petitioner at time of final judgment in Georgia on August 1, 2005, and was following current custom of local law, and she is therefore an actor in this civil rights lawsuit. Respondent, Frank D. Horkan, is a Colquitt County Superior Court Judge, presiding in more than one county, and a long-time business and law partner of Respondent, Dwight May. Respondent Frank D. Horkan resides in Moultrie, Georgia, and is an actor in this civil rights lawsuit. Respondent, Dwight May, was an attorney of Respondent, Nancy Cormier, while also acting as treasurer and campaign manager for Respondent, Frank D. Horkan, during his re-election campaign and during state court proceedings and a Federal removal from May to July, 2005, and he is therefore an actor in this civil rights lawsuit. Besides their political entanglements, Respondents Frank D.

Horkan and Dwight May have been business and law partners for over 20 years, and have established a pattern of quid pro quo behaviour during judicial proceedings by conspiring to violate Petitioner's constitutional rights and protections. Respondent Frank D. Horkan intentionally refused to disclose his financial and political relationship of over twenty years with Respondent Dwight May to Petitioner or his counsel at any time during the course of the state trial, nor during the Federal removal in 2005, nor during the subsequent appeal to the Georgia Supreme Court nor at any other time whatsoever. Respondent, George Ervin "Sonny" Perdue III, is the Governor of Georgia, who resides in Atlanta, Georgia, and is the responsible party for *ultra vires* actions on the part of state judges and other public officials presiding in more than one county; Respondent, George Perdue, is therefore an actor in this civil rights lawsuit. Respondent John B. Alderman is the chairman of the Colquitt County Commissioners and he is an actor in this civil rights lawsuit because he represents Colquitt County, Georgia, and is the responsible party for providing judicial services to Respondent, Judge Frank D. Horkan, during his *ultra vires* conduct and deprivation of Petitioner's constitutional and civil rights thereafter. Colquitt County, Georgia, is an actor in this civil rights lawsuit because it lacks Eleventh Amendment immunity and provided essential judicial services for Respondent Frank D. Horkan, during his *ultra vires* conduct, and furnished the Respondents with law enforcement and imprisonment facilities under color of law to

implement wrongful peonage contracts in violation of Federal law. Respondent Frank D. Horkan repeatedly threatened to have Petitioner arrested and jailed beginning with hearing of March 8, 2005 if Petitioner ever exercised his constitutional rights by removing his case to Federal court, thereby depriving Petitioner under coercion and duress of his constitutional rights to Due Process and Equal Protection under both Georgia and U.S. Constitutions. Both Respondents, Frank D. Horkan and Dwight May, were made aware that Respondent Frank D. Horkan was proceeding illegally in a "rush to judgment", and in violation of 28 U.S.C. § 1446, from May to July, 2005, despite submission of three Writs of Mandamus to the state court by Petitioner on July 5, 2005 with copies to the Federal District Court and the Georgia Supreme Court. In his June 14, 2005 *ultra vires* order (R6), Respondent Frank D. Horkan unlawfully granted money to Respondent Dwight May, which was also issued in violation of Georgia Superior Court Rules §24.2. "Financial data required", prohibiting awards of attorney's fees unless a financial affidavit has been entered by both parties, even though no affidavits had ever been entered. On October 5, 2007, Respondents attempted to pursue Petitioner across state lines to enforce unlawful forced-labor peonage contracts and collection of unlawful debts against Petitioner by using an order to domesticate the final judgment of the Georgia state court in Virginia (R8).

REASONS FOR GRANTING CERTIORARI

I. Review is warranted because the Rooker-Feldman abstention doctrine impermissibly infringes the Right of Redress of Grievances provision of the First Amendment by barring constitutional challenges involving civil rights abuses under 42 USC §1983, §1985 and §1994 et seq. within the state courts, thereby affecting lawsuits for millions of Americans.

The 11th Circuit Court of Appeals erroneously invoked the Rooker-Feldman abstention doctrine[1] for instant Case No: 10-11089 based upon this Court's finding in Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 125 S. Ct. 1517, 1527 (2005) using the supposition that the Petitioner's previous state case was "inextricably intertwined" with said instant case. Paradoxically, the Rooker-Feldman abstention doctrine has been invoked, even though the issues at hand had never been previously reviewed in a state or federal court, nor had an evidentiary hearing ever been conducted by the lower courts.

Additionally, the court of appeals has erred because the "inextricably intertwined" test has never been defined. As noted by legal scholar, Allison Jones, in her 2006 Duke Law Journal article, "The Rooker-Feldman Doctrine: What Does It Mean To Be

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[1] See Rooker v. Fidelity Trust Co., 263 U. S. 413 (1923), District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

Inextricably Intertwined?"[2], the interpretation and meaning of the phrase "inextricably intertwined" has caused a considerable amount of confusion within the lower courts leading to erroneous and inconsistent decisions:

> "Without much guidance from the Supreme Court concerning the meaning and application of the abstruse 'inextricably intertwined' concept, federal courts have formulated their own criteria and rules, resulting in a rather large body of diverse standards."

Moreover, the district court's error of failing to conduct an evidentiary hearing, made it virtually impossible for the lower courts to arrive at a determination of whether the Petitioner's state case was indeed "inextricably intertwined" with his state case. Plus, the lack of an evidentiary hearing made it impossible to assess the sufficiency of the Petitioner's federal case, nor was it possible for the Respondents to articulate any compelling state interest under the "strict scrutiny" standard of review to justify infringement of the Petitioner's constitutional rights under the 1st, 13th and 14th Amendments[3].

In addition, the erroneous decision by the court of appeals to invoke Rooker-Feldman is in direct conflict with extensive case law based upon

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[2] Duke Law Journal, *Vol. 56*:643 (Dec., 2006), http://www.law.duke.edu/shell/cite.pl?56+Duke+L.+J.+643+pdf

[3] See generally, Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 929 (1992).

previous decisions by this Court whenever state court abuse, malfeasance or lack of authority has been involved. Some notable examples include Monroe v. Pape, 365 U.S. 167 (1961), Stump v Sparkman, 435 U.S. 349 (1978), Dennis v Sparks, 449 U.S. 24 (1980), and Monell v. Department of Social Services, 436 U.S. 658 (1978).

Moreover, the Petitioner reserved all of his potential federal claims while in the state court using a Jennings-England reservation[4]. Indeed, it would seem that the notion of a federal issue being "inextricably intertwined" with a previous state case, as held in Exxon Mobil (*Id*), would paradoxically conflict with the previous findings of this Court that a litigant can use a Jennings-England reservation to permit him to have constitutional issues adjudicated in a federal court at a later date. More importantly, if the court of appeals' decision is permitted to stand, then civil rights cases, and "Redress of Grievances" under the First Amendment, will be threatened for millions of Americans.

Furthermore, it would seem that the decision by the court of appeals, based upon Exxon Mobil, would contravene and jeopardize the statutory conditions specified for adjudication of civil rights actions defined by 42 USC §1983, §1985 and §1994 et seq. This is especially true where declaratory relief was unavailable within the state court system, as it was proven to be in the instant case.

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[4] See England v. La. State Bd. of Med. Exam'rs, 375 U.S. 411, 415 (1964) and Jennings v. Caddo Parish School Bd., 531 F.2d 1331 (5th Cir.1976).

In fact, the legal theory that a state litigant could have his civil-rights claims adjudicated in federal court was upheld by this Court in Bailey v. Alabama, 219 U.S. 219 (1911), U.S. v. Kozminski and again in Monroe v. Pape, 365 U.S. 167 (1961). Specifically, in Monroe v. Pape, the grounds for adjudication of civil-rights violations were clearly articulated by this Court as follows: "1) 'to override certain kinds of state laws'; 2) to provide 'a remedy where state law was inadequate'; and 3) to provide 'a federal remedy where the state remedy, though adequate in theory, was not available in practice.'" All of these conditions involve some sort of "intertwining" with a state case, and all three of these conditions have been encountered by the Petitioner in the instant case. Indeed, although Petitioner sought declaratory relief in both the lower state court and in the Georgia Supreme court, his motions and petitions for same were denied without reasoned opinion.

Monroe v. Pape was especially relevant in the Petitioner's instant case because the state court violated a proper federal removal to the federal district court from May through July, 2005, and proceeded with the state trial in violation of 28 U.S.C. § 1446 (d) which subsequently caused lack of jurisdiction as well as proper notice or authority, and permitted coercion of a perpetual peonage contract against the Petitioner in violation of 42 U.S.C. §1994 et seq, again without authority or jurisdiction, causing Petitioner irreparable financial harm and forcing him into perpetual bankruptcy. At the same time, Petitioner's opposing counsel, Respondent

Dwight May, acted as the state trial judge's treasurer and re-election campaign manager without disclosing same to the Petitioner, making a fair trial impossible as guaranteed by the Fifth Amendment as well as impermissibly infringing Petitioner's Due Process and Equal Protection rights under the Fourteenth Amendment. Invocation of the Rooker-Feldman abstention doctrine has now barred review of these corrupt actions on the part of the Respondents and has impermissibly infringed Petitioner's right to Redress of Grievances under the First Amendment.

Another instance where the court of appeals' erroneous decision to invoke Rooker-Feldman and Exxon Mobil conflicted with well-established case law would be in reference to Monell v. Department of Social Services, 436 U.S. 658 (1978). Here, this Court held that a state litigant could pursue a civil rights action in federal district court against local officials for violation of his or her civil rights under 42 USC §1983, §1985 and §1994 et seq, as well as permitting a review of constitutional infringements. Again, such a case would of necessity involve a "state-court loser" and be "inextricably intertwined" with his or her state case. It is clear that this Court's findings in Monell were intended to allow adjudication of abuses and corruption by local officials closely associated with the state courts. Indeed, there is no way such cases could be otherwise.

Yet another instance where the court of appeals decision erred, by invoking Rooker-Feldman and Exxon Mobil, and would appear to conflict with previous case law by this Court, is in reference to

Dennis v Sparks, 449 U.S. 24 (1980), and Lugar v Edmonson Oil, 457 U.S. 922 (1982). In both of these cases, this Court found that a private party could be considered as an actor in a civil rights lawsuit if there had been collusion between said private actor(s) and the state court. This is especially true if the private party had used state law and the state court system in the coerced collection of a debt or obligation, as is true in the instant case. In both of these cases, federal claims would necessarily be "inextricably intertwined" with the state case and therefore paradoxically precluded by the Rooker-Feldman abstention doctrine.

Other case law examples where state court errors and malfeasance have been adjudicated by the federal courts include King v. Love, 766 F.2d 962, 968 (6th Cir.), cert. denied, 474 U.S. 971, 106 S.Ct. 351, 88 L.Ed.2d 320 (1985)(the act of deliberately misleading the police officer who was to execute the warrant about the identity of the person sought was nonjudicial); Sevier v. Turner, 742 F.2d 262 (6th Cir.1984)(juvenile court judge's initiation of criminal prosecution and civil contempt proceeding against a father for child support in arrears constituted nonjudicial acts). In New Alaska Development Corporation v. Guetschow, 869 F.2d 1298 (9th Cir.1988) a receiver appointed by the state court to manage business assets of an estate was not absolutely immune from allegations that he stole assets or slandered parties, as such alleged acts were not judicial; Harper v. Merckle, 638 F.2d 848 (5th Cir.), cert. denied, 454 U.S. 816, 102 S.Ct. 93, 70 L.Ed.2d 85 (1981)(holding a contempt proceeding and

ordering plaintiff incarcerated were not judicial acts where controversy that led to incarceration did not center around any matter pending before the judge, but around domestic problems of plaintiff's former wife who worked at the courthouse); Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979), cert. denied, 445 U.S. 938, 100 S.Ct. 1331, 63 L.Ed.2d 772 (1980) (allegedly repeated communications to the press and city officials which were critical of police lieutenant, and the improper instigation of criminal proceedings against the lieutenant by judge as part of a racial campaign to discredit lieutenant were not judicial acts).

And although there are numerous other case law examples where the Rooker-Feldman abstention doctrine and its corollary in the Exxon Mobil decision would present inconsistencies or conflicts with previous decisions by this Court, space limitations of this Petition prohibit their presentation here. Nevertheless, the Petitioner believes that the case law examples cited herein provide adequate arguments to justify review of the Rooker-Feldman abstention doctrine and granting of this Petition.

Moreover, as summarized in the above mentioned article, "The Rooker-Feldman Doctrine" (*Id*), virtually all of the content within the Rooker-Feldman abstention doctrine is redundant with and already covered by other preclusion doctrines as well as by the common-law principles of *collateral estoppel* and *res judicata*. In addition, this Duke Law Journal article identified at least four different methods utilized by lower federal courts to "interpret" the "inextricably intertwined" proviso:

> "These various formulas can be reduced to at least four basic approaches, each with some amount of internal diversity and almost none with a consistent circuit-wide application. For simplicity in examination and critique, this Note characterizes these as the res judicata approach, the Marshall approach, the *GASH* approach, and the *Noel* approach."

This lack uniformity in interpretation of civil rights cases alone presents an impermissible infringement of the Equal Protection provision of the Fourteenth Amendment and violates 42 U.S.C. § 1985, while further impermissibly infringing the Redress of Grievances provision of the First Amendment by barring adjudication of same. The Duke Law Journal article, "The Rooker-Feldman Doctrine" (*Id*), also noted that a litigant cannot adjudicate constitutional or civil rights issues within a state case while it is ongoing, due to the Younger[5] abstention doctrine. And because of Rooker-Feldman, the litigant is also barred from adjudicating a state-case issue after the state trial has ended. Hence, the Younger and Rooker-Feldman abstention doctrines together effectively bar adjudication and "redress of grievances" for all civil rights cases originating from state trial errors or malfeasance, and therefore their use by the lower courts to bar said civil rights cases

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[5] Younger v. Harris, 401 U.S. 37 (1971).

constitutes an impermissible infringement of the First Amendment.

Hence, elimination of the Rooker-Feldman abstention doctrine would immediately help to remove this bar to adjudication of numerous civil rights cases involving wrongful or unconstitutional state actions, especially those fostered within the state court system. Furthermore, without the Rooker-Feldman abstention doctrine, confusion over the meaning and interpretation by the lower courts of the "inextricably intertwined" test, would also be eliminated. Consequently, the Rooker-Feldman abstention doctrine will continue to impermissibly infringe the Redress of Grievances provision of the First Amendment until such time as it has been declared unconstitutional by this Court.

II. Review is warranted because the United States District Court has erroneously found, with concurrence of the Eleventh Circuit, that the Thirteenth Amendment and 42 USC § 1994 et seq only pertain to "African slavery", and that no "coercion" exists within the state court system.

In his district court complaint, Petitioner asserted that he has been and continues to be forced and coerced, under threat of jail and fines, into an unlawful peonage contract, under color of law, by named Respondents. However, adjudication of Petitioner's civil rights claims under the Thirteenth Amendment and 42 U.S.C. § 1994 et seq have been

barred due to the U.S. appeals court's erroneous finding that his instant case is "inextricably intertwined" with the state case and therefore subject to the Rooker-Feldman abstention doctrine. Consequently, the Petitioner continues to be coerced and forced into an illegal peonage contract caused by Respondent Horkan wrongfully proceeding with the state trial during a proper Federal removal, and the Georgia Supreme Court's refusal to adjudicate any constitutional issues or providing declaratory relief, causing further irreparable and continuing tort damages to Petitioner.

Moreover, claims by Respondents in their responses to the district court and the court of appeals, that the 13th Amendment only applies to situations involving African slavery or situations almost identical to African slavery, is egregiously in error, though challenge to this ruling has been barred by erroneous invocation of the Rooker-Feldman abstention doctrine. To wit, in Bailey v. Alabama, 219 U.S. 219 (1911), this Court properly and eloquently held:

> "While its immediate concern was African slavery, the Thirteenth Amendment was a charter of universal civil freedom for all persons of whatever race, color, or estate, under the flag.
>
> The words 'involuntary servitude' have a larger meaning than slavery, and the Thirteenth Amendment prohibited all control by coercion of the personal

> service of one man for the benefit of another."

Because Petitioner lacks a means of independent income, he has now and forever been forced, under threats and "legal process" into a state of perpetual debt servitude and bankruptcy by Respondents, through "control by coercion of the personal service of one man for the benefit of another" (*See* Bailey v Alabama).

Therefore, Respondents have impermissibly infringed the 13th Amendment and violated the Federal Anti-Peonage statutes, 42 U.S.C. § 1994 et seq. to the detriment of Petitioner. Furthermore, Respondents' erroneous citation of Loubser v. United States, 606 F. Supp. 2d 897 (N.D. Ind. 2009) in the district court refers to voluntary and legal agreements, and not an unlawful, coerced peonage contract derived through corrupt and *ultra vires* conduct of Respondents without jurisdiction, proper authority and outside judicial capacity.

This situation has been exacerbated by the district court's erroneous finding that no evidence of "coercion" existed within the Georgia state court system, without ever holding an evidentiary hearing. Had the district court held an evidentiary hearing it would have found that quite the opposite is true. In fact, the Fifth Circuit U.S. Court of Appeals ruled in Hopkins v. Jarvis, 648 F.2d 981, 983 n. 2 (5th Cir. 1981) that coercion of alimony and child support is a common practice in Georgia courts:

> One defense to either civil or criminal contempt for failure to pay alimony and child support would be that the payments were in fact timely made... Ensley v. Ensley, 239 Ga. 860, 238 S.E.2d 920 (1977); Carlton v. Carlton, 44 Ga. 216 (1871)... **The purpose of civil contempt is to coerce compliance with the [alimony] court order**; (emphasis added) if the payments are current when the alleged contemnor appears in court, a coercive sentence would be inappropriate. Hopkins v. Hopkins, 244 Ga. 66, 257 S.E.2d 902 (1979); Ensley v. Ensley, supra.

In essence, the use of "contempt" citations in Georgia state courts, as it is in all state courts, has become a euphemism synonymous with "coercion" of alimony or other monetary payments to implement state-enforced peonage, regardless of the legality. In the instant case, the Respondents acted upon *ultra vires* orders made by Respondent Frank Horkan outside his judicial capacity, and therefore subsequent rulings constituted an illegal peonage contract. When the Georgia Legislature repealed the Doctrine of Necessaries in 1979, it effectively made married and divorced Georgians economic independents, and made alimony a dubious practice at best, tantamount to an illegal state-enforced peonage contract between adults. Georgians are now economic independents in marriage and divorce, and

there can be no compelling state interest to strip one party of his or her constitutional protections under the 13th and 14th Amendments as well as statutory protections under 42 U.S.C. § 1994 et seq.

Furthermore, Respondents Horkan and Perdue further erred by claiming that United States v. Kozminski, 487 U.S. 931, 942 (1998) supported their narrowly construed argument that the 13th Amendment only pertains to African slavery. To the contrary, this Court correctly held in U.S. v. Kozminski:

> "... the term 'involuntary servitude' necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury or by the use or threat of coercion through law or the legal process." (Pp. 939-953)

Accordingly, Petitioner has been and continues to be under "threat of coercion through law or legal process" to force him into an unlawful peonage contract now and forever. Consequently, the 13th Amendment and 42 U.S.C. § 1994 et seq and its associated criminal statutes, 18 U.S.C. § 1581, § 1584 and § 1589(2)(3), must be interpreted broadly to apply to all U.S. citizens and to Respondents, and to all situations involving forced or coerced obligations or labor as well. Therefore, although Petitioner sufficiently stated his 13th Amendment claims and related claims under 42 U.S.C. § 1983 and § 1994 et

seq, he has been wrongfully barred from prosecuting his constitutional and federal statutory claims against Respondents by the erroneous invocation of the Rooker-Feldman abstention doctrine by the court of appeals.

III. Review is warranted because the United States District Court has erroneously found, with concurrence of the Eleventh Circuit, that a state court may proceed with trial during a federal removal despite complete lack of jurisdiction under 28 U.S.C. § 1446(d) and extensive case law to the contrary.

(i) Policy

The Petitioner has been coerced and forced into an unlawful state-enforced peonage contract by Respondents because Respondent state trial judge, Frank D. Horkan, wrongfully proceeded with a state trial during a proper federal removal. However, the court of appeals has barred Petitioner from adjudicating his federal civil rights, constitutional and statutory claims against the Respondents due to improper and erroneous invocation of the Rooker-Feldman abstention doctrine based upon its holding that Petitioner's action was "inextricably intertwined" with a prior state case, without benefit of an evidentiary hearing and despite Petitioner asserting a Jennings-England reservation. In effect, the court of appeals has ruled that a state court judge may proceed with trial during a proper federal

removal in violation of 28 U.S.C. § 1446(d) and extensive case law to the contrary.

This situation sets a dangerous precedent by establishing that a state judge may act without authority or jurisdiction and proceed with a sham trial with impunity and without fear of legal sanctions or recourse against him. The only recourse left to Petitioner, or anyone else similarly situated, would be to pursue a civil rights case against the state actors under 42 U.S.C. § 1983, § 1985 and § 1994 et seq and related federal law. Furthermore, Respondent Horkan was a political and business crony of the Petitioner's opposing counsel, Respondent Dwight May. As such, Respondents Horkan and May have committed probable corrupt criminal acts under 18 U.S.C. § 241, and the Federal RICO Statutes, 18 U.S.C. §§ 1951-1968 inter alia, for illegal collection of an unlawful debt under color of law.

Oddly, the Petitioner has now been barred from seeking legal remedies or "redress of grievances" against any wrongful or corrupt practices by Respondents, as state court actors, because of erroneous misapplication of the Rooker-Feldman abstention doctrine by the court of appeals. Moreover, the Rooker-Feldman abstention doctrine, along with the corollary decision in Exxon Mobil (*Id*), effectively bar any civil-rights lawsuits resulting from state court errors, corruption and malfeasance, because these litigants have been deemed nothing more than complaints by "state court losers". Under these circumstances, civil rights litigation and "redress of grievances" are barred even when a state

court official steps across the line and exercises power without jurisdiction. This is a particularly flagrant affront to the civil rights and constitutional rights of all Americans when state court power has been abused and misused to the extent where it results in the tyrannical and oppressive deprivation of a citizen's liberty interest, civil rights and freedoms under the United States Constitution. Indeed, the Rooker-Feldman abstention doctrine has become a vehicle to provide "safe haven" for corrupt state officials.

Congress created a remedy to deal with such situations with the Civil Rights Act of 1871. This Act affords citizens the opportunity to address such transgressions against the rule of law and constitutional protections. In the instant case, this opportunity was erroneously denied due to wrongful invocation of the Rooker-Feldman abstention doctrine, thereby infringing the 1st Amendment.

Failure by the lower courts to permit adjudication of state-related civil rights claims presents major constitutional infringements and reflects upon flawed proceedings barring the Redress of Grievances provision under the First Amendment to United States Constitution. Plus, it obstructs a Liberty Interest and guaranteed freedoms to the Petitioner and to all Americans seeking similar redress within the federal court system.

When all the law of 42 U.S.C. § 1983 is contrary to the lower courts' view of judicial immunity and state actors, the lower courts' errors should not be etched in perpetuity. Instead, they merit attention and correction. This esteemed Court

has an opportunity with the instant case to rectify said errors which will permit millions of Americans to seek proper redress of grievances for civil rights violations. When judicial conduct within the state courts, knowingly and deliberately exercises power denying liberty without jurisdiction, such conduct deserves the opportunity of an open judicial proceeding. These are all policy reasons that this Court should grant this Writ of Certiorari.

(ii) Contrary law

The lower court decision raises an important question of federal and civil rights law as well as the constitutionality of the Rooker-Feldman abstention doctrine. It did so in a way that is contrary to all of this Court's previous rulings on judicial immunity and defining state actors for 42 U.S.C. § 1983 actions.

(iii) Jurisdiction of 28 U.S.C. § 1446(d)

Violation of 28 U.S.C. § 1446(d) represents a state proceeding "in clear absence of all jurisdiction" or is a "proceeding in excess of jurisdiction", Hence, the former situation creates a loss of immunity from lawsuits for a state court judge.

Although Petitioner cited considerable case law on lack of state-court jurisdiction during a Federal removal, he reiterates herein, considering the extent to which Respondents Horkan and Perdue have gone to erroneously contend *de novo* that the state court retains a sort of "partial" jurisdiction

under Federal removal. The Petitioner briefly summarizes his arguments to the contrary. In particular, 28 U.S.C § 1446(d) unambiguously declares that the state court was divested of all jurisdiction during the proper Federal removal effected on May 24, 2005:

> "Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

Moreover, 28 U.S.C. § 1446 governs the procedure for Removal of a state action to a federal court. By attempting to block a Federal removal, Respondent Horkan was violating federal law without judicial capacity, effectively obstructing justice and attempting to create a constructive fraud, while denying Petitioner his Rights to Due Process and Equal Protection guaranteed him under the 14th Amendment. In fact, a state court has a "duty ... to proceed no further in the cause."[6] The Georgia Supreme Court was egregiously in error when it ruled that a state judge has the power to veto a

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[6] Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882); Hyde Park Partners, L.P. v. Connolly, 839 F.2d 837, 842 (1st Cir. 1988).

federal removal. This finding was also contrary to Int'l Primate Prot. League v. Admin. of Tulane Ed. Fund, 500 U.S. 72, 89 (1991) (noting that "the literal words of § 1447(c) . . . give . . . no discretion to dismiss rather than remand an action."

Since 1882, federal courts have consistently held that upon the filing of the petition for removal, the jurisdiction of the state court absolutely ceases, and that of the Federal court immediately attaches.[7] Accordingly, upon the filing of the notice of removal, unless and until remanded, all further proceedings in state court are void *ab initio* because they are in fact *coram non judice*. Id.; see Hyde Park Partners, 839 F.2d, at 842 (1st Cir. 1988) (hearing and temporary restraining order issued by state court void *ab initio* where entered following removal to federal court); Polyplastics, Inc. v. Transconex, Inc., 713 F.2d 875, 880 (1st Cir. 1983) (citing E.D. Systems Corp. v. Southwestern Bell Telephone, 674 F.2d 453, 458 (5th Cir. 1982) and Arango v. Guzman Travel Advisers Corp., 621 F.2d 1371, 1374, 1375 (5th Cir. 1980) for the proposition that post-removal Civil No. 04-2288(DRD) proceedings in state court are void *ab initio* once the case is removed; Sweeney v. Resolution Trust Corp., 16 F.3d 1, 4 (1st Cir. 1994) ("purported judgment" entered by state court void *ab initio* where entered following removal to federal court); Hernandez-Lopez v. Com. of Puerto Rico, 30 F.Supp.2d 205, 211 (D. P.R. 1998); accord In re Diet Drugs, 282 F.3d 220, 231-232 (3d Cir. 2002); State of South Carolina v. Moore, 447 F.2d 1067, 1073 (4th

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[7] Steamship, 106 U.S., at 122-23.

Cir. 1971); Lowe v. Jacobs, 243 F.2d 432, 433 (5th Cir. 1957); Ward v. Resolution Trust Corp., 972 F.2d 196, 198 (8th Cir. 1992); California ex rel. Sacramento Metropolitan Air Quality Management Dist., v. United States, 215 F.3d 1005, 1011 (9th Cir. 2000). Hence, the removal of a case from state court to Federal court effects a transfer of the entire action and jurisdiction, including all the parties and all the claims, to the Federal court.[8]

(iv) Limits of Judicial Immunity

Although state court judges have immunity under most circumstances, this Court has affirmed that there are limits to judicial immunity. For instance, this Court has held that judicial immunity ceases under circumstances where a judge lacks jurisdiction or when he acts without authority: "he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" Stump v. Sparkman, 435 U.S. 349, 357 (1978).

Based upon all available case law, when a judge violates 28 U.S.C. 1446(d), he is proceeding "in clear absence of all jurisdiction". Although the lower courts failed to address Respondent Horkan's violation of 28 U.S.C. § 1446(d), the statute clearly states, "...and the State court shall proceed no

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[8] City of Gainesville v. Brown-Crummer Investment Co., 277 U.S. 54, 60 (1928); Arango v. Guzman Travel Advisors Corp., 621 F.2d 1371, 1376 (5th Cir. 1980); Murphy v. Kodz, 351 F.2d 163, 167 (9th Cir. 1965); Hartlein v. Illinois Power Co., 601 N.E.2d 720, 726 (Ill. 1992).

further unless and until the case is remanded". Furthermore 28 U.S.C. § 1446(d) unambiguously delineates a "clear absence of jurisdiction." The Petitioner argued this point strongly, but the district court never addressed the argument. Instead, the district court overlooked 28 U.S.C. § 1446 (d) and all the case law presented to it that lucidly holds that the statute deprived the state court of all jurisdiction until the removed action is remanded.

Respondents Horkan and Perdue have contended that they are state officials and therefore have "absolute immunity" from liability or prosecution under the 11th Amendment. However, such a contention is absolutely false and erroneous. Under Ex Parte Young, 209 U.S. 123 (1908), the Respondents can be held accountable when they act unlawfully, without authority, without jurisdiction or outside judicial capacity.

In the case of Respondents Horkan and May, they clearly acted *ultra vires* during a proper federal removal during the period of May to July, 2005, and Respondent Horkan displayed contempt and reckless disregard for federal law in his order of June 14, 2005 (App. B8), stating that he was not required to obey federal law, contrary to Howlett v. Rose, 496 U.S. 356 (1990), and in violation of 28 U.S.C. § 1446 requiring that a state trial must be halted during a Federal removal. As a result, Petitioner has been forced into a perpetual peonage contract and perpetual bankruptcy. Moreover, Respondents Horkan and May failed to reveal their political relationship at time of state trial, whereby Respondent May acted as Respondent Horkan's

campaign manager and treasurer for his re-election campaign during the time of said federal removal from May to July, 2005, making Petitioner's right to Due Process and a Fair Trial impossible.

In addition, Respondent Horkan, under color of law, awarded thousands of dollars to his political crony, Respondent Dwight May, in his *ultra vires* order of June 14, 2005. Consequently, Respondents not only lose their immunity based upon this Court's findings in Stump v. Sparkman, 435 U.S. 349 (1978), but state court judges can also lose their 11th Amendment and other immunity when they act outside their judicial capacity: King v. Love, 766 F.2d 962, 968 (6th Cir.), cert. denied, 474 U.S. 971, 106 S.Ct. 351, 88 L.Ed.2d 320 (1985)(although setting bond on an arrest warrant is a judicial act, the act of deliberately misleading the police officer who was to execute the warrant about the identity of the person sought was nonjudicial); Sevier v. Turner, 742 F.2d 262 (6th Cir.1984)(juvenile court judge's initiation of criminal prosecution and civil contempt proceeding against father for child support in arrears constituted nonjudicial acts). In New Alaska Development Corporation v. Guetschow, 869 F.2d 1298 (9th Cir.1988) receiver appointed by state court to manage business assets of an estate was not absolutely immune from allegations that he stole assets or slandered parties, as such alleged acts were not judicial; Harper v. Merckle, 638 F.2d 848 (5th Cir.), cert. denied, 454 U.S. 816, 102 S.Ct. 93, 70 L.Ed.2d 85 (1981)(holding a contempt proceeding and ordering plaintiff incarcerated were not judicial acts where controversy that led to incarceration did not

center around any matter pending before the judge, but around domestic problems of plaintiff former wife who worked at the courthouse); Harris v. Harvey, 605 F.2d 330 (7th Cir.1979), cert. denied, 445 U.S. 938, 100 S.Ct. 1331, 63 L.Ed.2d 772 (1980)(allegedly repeated communications to the press and city officials which were critical of police lieutenant, and the improper instigation of criminal proceedings against the lieutenant by judge as part of a racial campaign to discredit lieutenant were not judicial acts).

The Petitioner calls attention of this Court to additional case law affirming that state court judges lose their immunity when they act without jurisdiction or outside their authority, especially during a federal removal. Some of these cases include: State of South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971); Maseda v. Honda Motor Co., 861 F.2d 1248, 1254 (11th Cir. 1988); Allman v. Hanley, 302 F.2d 559, 562 (5th Cir. 1962); "Any subsequent proceedings in state court on the case are void *ab initio*." Maseda, 861 F.2d at 1254-55 (citing Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882)); accord South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971). In re: Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882):

> "...the suit being removable under the statute, the jurisdiction of the state court absolutely ceased and that of the circuit court of the United States immediately attached. The duty of the state court was to proceed no further in

> the cause. Every order thereafter made in that court was *coram non judice* unless its jurisdiction was actually restored."

In spite of all the above case law citations, the court of appeals erred by finding that state judges have "sovereign immunity" (App. A 2), regardless of circumstances. In their judgment, this erroneous finding, made without an evidentiary hearing, cleared the way for invocation of the Rooker-Feldman abstention doctrine to permit vacating of the entire instant case without reasoned opinion. Consequently, all redress of grievances has been barred to Petitioner with the exception of this Court.

(v) Private Actors Under § 1983

In the case of a challenged action committed by a person not employed by the government, the under-color-of-law criteria focuses on the nature of the connections between the private actor and the state. As held by this Court, when a private person conspires with a state actor or actors, or officials for the purpose of an alleged conspiracy against a plaintiff's civil rights, that connection clearly suggests actions under color of law[9]; see Dennis v. Sparks, 449 U.S. 24, 28 (1980):

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[9] Dennis v. Sparks, 449 U.S. 24, 28 (1980) (holding that private parties who corruptly conspired with a state judge acted "under color of law").

> "...to act 'under color of state law for 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a wilful participant in joint action with the State or its agents. Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of 1983 actions." Adickes v. S. H. Kress & Co., 398 U.S. 144, 152 (1970); United States v. Price, 383 U.S. 787, 794 (1966)"

Additionally, this Court held that use of a state statute by a private actor, when combined with the presence of state-official actors, signifies state action[10] in Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982). Furthermore, this Court held in Lugar that any creditor who has used a state statute for enforcement of an alleged debt had acted under color of law because, in attaching the debtor's property, with help from the judge, court clerk, sheriff or other state official, the creditor had further used state power.

> "Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is

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[10] Lugar v. Edmondson Oil Co., 457 U.S. 922, 939–42 (1982).

> enough that he is a wilful participant in joint activity with the State or its agents," quoting United States v. Price, 383 U.S., at 794 . [457 U.S. 922, 942]

Moreover, assistance from state officials made the Respondent creditors, Ann Buechler, Nancy Cormier and Dwight May, joint participants in state action. In the instant case, these private-actor Respondents, acted "under color of law" by using the Georgia Alimony Statutes to enforce an alleged debt through joint action and active encouragement of Respondents Horkan and May. Indeed, Defendant Horkan was willing to violate Federal law and incarcerate the Petitioner, in concert with Respondents Nancy Cormier and Ann Buechler, in order to enforce an alleged debt against the Petitioner. As an attorney, Respondent May had no special privilege from suit in a 42 U.S.C. § 1983 action as this Court held in Wyatt v. Cole, 504 U.S. 158 (1992) where this Court found that an attorney and his client were proper defendants in a 42 U.S.C. § 1983 action where privilege was never an issue.

However, the Petitioner has now been wrongfully barred by the court of appeals from litigating a § 1983 lawsuit against the named Respondent actors by the Rooker-Feldman abstention doctrine, thereby impermissibly infringing the Petitioner's right to Redress of Grievances under the First Amendment.

(vi) Liability of Local Officials

Qualified or 11th Amendment immunity is unavailable in an official capacity suit, especially for local officials. This Court has held that a local government defendant has no qualified immunity from compensatory damages liability as is true for Respondents Alderman and Colquitt County.[11] Also, in Fagan v. City of Vineland, 22 F.3d1283, 1292 (3d Cir. 1994), "A finding of municipal liability does not depend automatically or necessarily on the liability of any . . . officer."

In Monell v. Department of Social Services, 436 U.S. 658 (1978), this Court has found that local governments can be held liable for damages, along with declaratory and injunctive relief, whenever "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover "... local governments ... may be sued for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decision-making channels."[12] Also, Monell overruled Monroe

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[11] Owen v. City of Independence, 445 U.S. 622 (1980). Specifically, local government entity (e.g., a county, municipal corporation, or other political subdivision of the state) generally cannot claim 11th Amendment immunity. Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977); Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 369 (2001).

[12] *Id.* at 690–91. There is conflicting authority as to whether the Monell "custom or policy" requirement applies to claims for only prospective relief. In Los Angeles Police Protective League v.

v. Pape , 365 U.S. 167 (1961), by rejecting the opinion in Monroe that local governments could not be sued as "persons" under § 1983. Instead, Monell has held that local governments have liability in both an individual and official capacity.

In particular, the Petitioner has named Respondent Alderman as an official in his individual and official capacity, and therefore the Petitioner has sought personal liability upon a government official and local government for unconstitutional and unlawful actions taken by Colquitt County officials and facilities under color of state law, Kentucky v. Graham, 473 U.S. 159, 165 (1985). When the Petitioner named Respondent Alderman in his official capacity, the Petitioner was seeking to recover damages from the government body itself. *See* Brandon v. Holt, 469 U.S. 464, 471–72 (1985); Kentucky, 473 U.S. at 159. Naming a government official in his official capacity is the equivalent of naming the government entity itself as the defendant, and requires only that the plaintiff include a Monell-type proof of an official policy or custom as the cause of the constitutional violation. In the instant case, Respondents Alderman and Colquitt County have made it a custom to jail civil defendants for nonpayment of debts or obligations in violation of 42 U.S.C. § 1983 and § 1994 et seq.,

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Gates, 995 F.2d 1469, 1472 (9th Cir. 1993), the majority stated that "the City can be subject to prospective injunctive relief even if the constitutional violation was not the result of an 'official custom or policy'" (citing Chaloux v. Killeen, 886 F.2d 247, 251 (9th Cir. 1989).

thereby impermissibly infringing Freedom from Involuntary Servitude under the 13th Amendment of the U.S. Constitution and Article I Section I Paragraph XXII of the Georgia Constitution. In addition, Respondents Alderman and Colquitt County have tolerated and encouraged unlawful and *ultra vires* conduct by Respondents Horkan and his business and political crony, Respondent May, through custom and practice. Yet the court of appeals ruling to invoke the Rooker-Feldman abstention doctrine has now wrongfully barred and impermissibly infringed the Petitioner's right to Redress of Grievances under the First Amendment.

CONCLUSION

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted because it is clear that his First, Fifth, Thirteenth and Fourteenth Amendment rights have been impermissibly infringed by the Eleventh Circuit Court of Appeal's wrongful invocation of the Rooker-Feldman abstention doctrine.

Therefore, the Petitioner respectfully requests this Court consider summary reversal of the decision by the Eleventh Circuit Court of Appeals and that this Court order remanding of the Petitioner's case to the district court to proceed with trial in accordance with his requested change of venue to the Athens, Georgia division district court of the Middle District of Georgia.

Furthermore, this Court may also wish to consider that the Rooker-Feldman abstention doctrine be declared unconstitutional because of its frequent use by the lower courts to bar Redress of Grievances, thereby impermissibly infringing the First Amendment rights under the United States Constitution of the Petitioner and for millions of Americans.

Respectfully submitted,

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(703-268-4358)

December 11, 2010

In the Supreme Court of the United States

Denny C. Cormier,
Petitioner

v.

Frank D. Horkan, *et al.*
Respondents

On Petition for a Writ of Certiorari
To The United States Court of Appeals
For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

42 U.S.C. § 1983 Action

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
Case No: 10-11089

Denny C. Cormier
Appellant
v. Frank D. Horkan, et al.
Appellees

Appeal from U.S. District Court for the Middle District of Georgia, Valdosta (7:09-cv-00068-HL)

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UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No: 10-11089

Denny C. Cormier, Plaintiff - Appellant

v. Honorable Frank D. Horkan *et al*,

Defendants - Appellees.

Appeal from U.S. District Court for the Middle District of Georgia (7:09-cv-00068-HL)

JUDGMENT

(September 23, 2010)

Before BLACK, PRYOR and ANDERSON, Circuit Judges. PER CURIAM:

Denny C. Cormier appeals the district court's order dismissing his *pro se* complaint, which alleged various constitutional and statutory violations in connection with his state court divorce proceedings and requirement to pay alimony, for failure to state a claim. The underlying dispute arose after the Georgia Superior Court, per Judge Horkan, entered a final decree dissolving the marriage and awarding Cormier's ex-wife alimony in 2005. *Cormier v. Cormier*, 280 Ga. 693, 693, 631 S.E.2d 663, 664 (Ga. 2006) (*Cormier I*). In June 2009, Cormier filed the present action in federal court against seven

defendants[13] alleging violations of the Fifth, Thirteenth, and Fourteenth Amendments, 42 U.S.C. §§ 1982, 1983, 1985, 1994, the federal and Georgia RICO statutes, and the common-law torts of intentional infliction of emotional distress and tortuous interference with business relations. Cormier's complaint sought to invalidate the state-court alimony order, among other relief. The district court granted the defendants' motions to dismiss, holding that Governor Perdue and Judge Horkan were immune from suit under the doctrines of sovereign and judicial immunity and that Cormier's complaint failed to state a claim upon which relief could be granted as to all counts. Accordingly, the court dismissed Cormier's requests for declaratory judgment and injunctive relief. This appeal ensued. Although the district court did not address the defendants' argument in their motions to dismiss that it lacked subject matter jurisdiction over Cormier's complaint, we are compelled to review the district court's subject-matter jurisdiction *de novo*. *See Zakrzewski v. McDonough*, 490 F.3d 1264, 1267 (11th Cir. 2007). "A federal court must always dismiss a case upon determining that it lacks subject matter jurisdiction, regardless of the stage of the proceedings, and facts outside of the pleadings may be considered as part of that determination." *Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1332 n.6 (11th Cir. 2001). After thorough review of

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[13] The defendants included the Governor of Georgia ("Sonny" Perdue), Judge Horkan, the Chairman of Colquitt County Commissioners, Colquitt County, Cormier's ex-wife, her attorney, and Cormier's mother-in-law.

the record and the parties' briefs, we conclude that the district court lacked jurisdiction over Cormier's complaint, which was barred by the *Rooker-Feldman* doctrine. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16, 44 S. Ct. 149, 150 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 476–82, 103 S. Ct. 1303, 1311–15 (1983). "The *Rooker-Feldman* doctrine places limits on the subject-matter jurisdiction of federal district courts and courts of appeal over certain matters related to previous state court litigation." *Goodman*, 259 F.3d at 1332. Under the *Rooker-Feldman* doctrine, federal district courts cannot review final state court judgments because "that task is reserved for state appellate courts or, as a last resort, the United States Supreme Court." *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009). The Supreme Court has only applied the doctrine on two occasions, and has recently reiterated that the scope of the *Rooker-Feldman* doctrine is exceedingly narrow, "confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 1521–22 (2005); *see also Nicholson v. Shafe*, 558 F.3d 1266, 1268 (11th Cir. 2009). Prior to *Exxon Mobil*, our circuit had traditionally applied a four-factor test to guide the application of the *Rooker-Feldman* doctrine, finding that it bars federal jurisdiction where: "(1) the party in federal court is the same as

the party in state court; (2) the prior state court ruling was a final or conclusive judgment on the merits, (3) the party seeking relief in federal court had a reasonable opportunity to raise its federal claims in the state court proceeding, and (4) the issue before the federal court was either adjudicated by the state court or was inextricably intertwined with the state court's judgment." *Amos v. Glynn County Bd. of Tax Assessors*, 347 F.3d 1249, 1266 n.11 (11th Cir. 2003) (citations omitted). However, due to the Supreme Court's cautionary statement in *Exxon Mobil* that the *Rooker-Feldman* doctrine "has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases," 544 U.S. at 283, 125 S. Ct. at 1521, we have since declined to adhere to the *Amos* test. *See Nicholson*, 558 F.3d at 1274 (electing to apply *Exxon-Mobil*'s strict language confining the doctrine to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments" as opposed to the *Amos* test). Thus, for the *Rooker-Feldman* doctrine to apply under the strictures of *Exxon-Mobil*, we must first determine whether the state court "rendered judgment before the district court proceedings commenced." *See id.* Cormier filed his federal complaint in this lawsuit on June 2, 2009, almost three years after the Georgia Supreme Court affirmed the Superior Court's final decree in his state court divorce action. *See Cormier I*, 280 Ga. at 696, 631 S.E.2d at 665. Because Cormier exhausted his state court remedies well before he filed this

federal suit, the state proceedings had ended for purposes of the *Rooker-Feldman* doctrine. *Cf. Nicholson*, 558 F.3d at 1278 ("[B]ecause the Appellants filed the instant federal action while the state court action continued in the appeals process in state court, the state proceedings had not ended."). Secondly, we must determine whether a plaintiff is a state-court loser who is complaining of injuries caused by state-court judgments. *See Exxon-Mobil*, 544 U.S. at 284, 125 S. Ct. at 1521–22. In doing so, our circuit has continued to apply the fourth factor of the *Amos* test, evaluating whether the plaintiff's claims are "inextricably intertwined" with the state court judgment. *See Casale*, 558 F.3d at 1260 (quoting *Feldman*, 460 U.S. at 482 n.16, 103 S. Ct. at 1315 n.16). "A claim is inextricably intertwined if it would effectively nullify the state court judgment or it succeeds only to the extent that the state court wrongly decided the issues." *Id.* (internal quotations and citations omitted). Evaluating Cormier's complaint under this standard, we conclude that it falls directly within the scope of the *Rooker-Feldman* doctrine's jurisdictional bar. In his complaint, Comier generally seeks to invalidate the state court's alimony ruling through various constitutional, statutory, and common law challenges. The essence of his complaint is that various private and state actors conspired to use the Georgia Alimony Statutes, O.C.G.A. §§ 19-6-1 et seq., to place him into a condition of involuntary servitude through an unconstitutional alimony-peonage contract. Although Cormier seeks damages in the amount of $1 million for his alleged injuries, he also expressly prays for an

injunction setting aside the current alimony order, any future orders seeking to enforce the court's divorce decree, and the final judgment of the Georgia Superior Court. In *Casale v. Tillman*, we held that the federal courts lacked subject matter jurisdiction over a similar complaint, which sought to invalidate a state-rendered contempt order in connection with a divorce proceeding. 558 F.3d at 1261. Like Cormier, the plaintiff in *Casale* attempted to use the federal courts to enjoin his ex-wife from enforcing an aspect of the state-court judgment, arguing that the contempt orders, which held him in contempt for discontinuing retirement payments to his ex-wife, violated the Uniformed Services Former Spouses' Protection Act ("FSPA"), 10 U.S.C. § 1408, by effectively compelling him to retire from military service. *Id.* We concluded that such a claim, although a federal preemption challenge, was "inextricably intertwined" with the state court judgment and that Casale was "just the sort of 'state-court loser' the *Rooker-Feldman* doctrine was designed to turn aside." *Id.* (alteration omitted).

We concluded that "[i]f Casale believed the state court's result was based on a legal error, the proper response was the same one open to all litigants who are unhappy with the judgment of a trial court: direct appeal." *Id.* Cormier's complaint is equally barred by the *Rooker-Feldman* doctrine because his constitutional and statutory challenges are essentially an effort to block enforcement of the state court's alimony order. Success on his federal claims would "effectively nullify" the state court judgment; thus, his claims are inextricably

intertwined with the divorce action, and Cormier should have pursued all of his claims on direct appeal. *See id.* Accordingly, his complaint falls within the confines of the *Rooker-Feldman* jurisdictional bar, and it is unnecessary for us to address Cormier's claims raised on appeal.[14] In conclusion, we vacate the district court judgment and remand with instructions to dismiss Cormier's complaint for lack of jurisdiction.[15]

VACATED and REMANDED; DISMISSED for lack of jurisdiction.[16]

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eleventh Circuit.

/s/ JOHN LEY, CLERK

Dated: September 23, 2010

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[14] We note that Cormier abandoned many claims by not raising them in his briefs onappeal. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (stating that, although *pro se* briefs are liberally construed,"issues not briefed on appeal by a *pro se* litigant are deemed abandoned"). As to the issues Cormier did raise, we find them all meritless. Even if the *Rooker-Feldman* doctrine was not dispositive of Cormier's lawsuit, we would still affirm the district court's dismissal of Cormier's complaint for the reasons set forth in its opinion, which warrants no further discussion.

[15] Cormier's motion for leave to file an amended reply brief is GRANTED.

[16] Appellant's motion for leave to file an amended reply brief out of time is GRANTED.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No: 10-11089

Denny C. Cormier, Plaintiff - Appellant
v. Honorable Frank D. Horkan *et al*,
Defendants - Appellees

Appeal from U.S. District Court for the Middle District of Georgia (7:09-cv-00068-HL)

BRIEF FOR APPELLANT

STATEMENT OF JURISDICTION

The United States District Court for the Middle District of Georgia had jurisdiction to review this constitutional challenge to state statues under Article III Section 2 U.S. Constitution, 28 U.S.C. § 1331, 42 U.S.C. § 1983, 28 U.S. C. § 1367(a) and authority under 28 U.S.C. § 2201. Furthermore, this Court has jurisdiction of this appeal from the district court pursuant to 28 U.S.C. § 1291, concerning the Order to Dismiss and Judgment entered by the district court rendered on February 11 and 12, 2010 respectively. This appeal was timely noticed with the district court on March 10, 2010. Said timeliness is proper under Fed.R.App.P. 4(a)(4).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether the district court erred in granting Defendants' Motion to Dismiss the Appellant's Verified Complaint wherein the district court failed to hold an Evidentiary Hearing on critical issues dispositive of the instant case and by blocking discovery of same?

II. Whether the district court erred by dismissing the Appellant's Complaint without reviewing constitutional infringements of his 13th and 14th Amendment rights by Appellees due to *ultra vires* conduct by Appellee Horkan thereby contravening Stump v. Sparkman, 435 U.S. 349 (1978)?

III. Whether the district court erred by failing to proceed with trial by summarily dismissing Plaintiff's 42 U.S.C. § 1983 and 42 U.S.C. § 1994 claims against Appellees without due consideration of probative facts or law?

IV. Whether the district court erred by failing to consider Appellee Frank Horkan's *ultra vires* conduct under 28 U.S.C. § 1446(d) during a proper removal to Federal district court causing Appellee Horkan to act outside his judicial capacity?

V. Whether the district court erred by holding that there was no evidence of coercion against alimony defendants in Georgia state courts in contradiction to Hopkins v. Jarvis, 648 F.2d 981, *983 n. 2 (5th Cir.1981)*?

VI. Whether the district court erred by failing to rule on Appellant's "Motion for Partial

Summary Judgment" against Defendant-Appellee Frank Horkan?

VII. Whether the district court erred by failing to review violations of Appellant's Right to a Fair Trial due to the *quid pro quo* relationship between Appellees Horkan and May at time of state trial?

VIII. Whether the district court erred by failing to consider liability of Appellee John Alderman as a 42 U.S.C. § 1983 actor under Monell v. Department of Social Services, 436 U.S. 658 (1978)?

IX. Whether the district court erred by failing to consider 42 U.S.C. § 1983 and § 1994 liability of Appellees Ann Buechler, Nancy Cormier and Dwight May as actors in a civil rights lawsuit under Dennis v. Sparks, 449 U.S. 24, 28 (1980) and Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982)?

X. Whether the district court erred by making pretrial prejudicial remarks?

STATEMENT OF THE CASE

A. Statement of Proceedings

Although the relevant portions of the state case proceedings have been thoroughly summarized in the Verified Complaint (R1:9-16), the essential events of the proceedings leading to the aforesaid Federal removal began on April 11, 2005, when Appellant filed an Application for Discretionary Appeal before the Georgia Supreme

Court, pursuant to the Family Law Project, Divorce/alimony Project, to challenge errors by the lower state court and review his Motion for Declaratory Judgment. The Georgia Supreme Court declined to review Appellant's Application for Appeal on May 12, 2005 without reasoned opinion. On May 24, 2005, having exhausted his state court remedies, Appellant therefore re-removed the issues and claims surrounding his Motion for Declaratory Judgment, involving a Liberty Interest and a constitutional challenge to the Georgia Alimony Statutes O.C.G.A. §§ 19-6-1 et seq, to the United States District Court, Middle District of Georgia, Case #6:05-CV-26, having previously reserved his constitutional claims by asserting a Jennings-England reservation. (See England v. La. State Bd. of Med. Exam'rs, 375 U.S. 411, 415 (1964) and Jennings v. Caddo Parish School Bd., 531 F.2d 1331 (5th Cir.1976).) While the state case was under removal to the district court, the state trial-court judge, Appellee Frank D. Horkan, without jurisdiction issued an *ultra vires* ex parte order on June 14, 2005 (R6), in violation of 28 U.S.C. § 1446. During said ex-parte hearing on June 14, 2005, and outside his judicial capacity, Appellee Frank D. Horkan ordered Appellant to pay an unlawful debt to opposing counsel, Appellee Dwight May sums of money in excess of $3,000 during a proper removal to the district court. Appellee Horkan also scheduled further hearings in his *ultra vires* order of June 14, 2005. On July 5, 2005, Appellant petitioned state trial court with a Writ

of Mandamus to advise the trial court to conform to Federal Statutes, whereupon Appellant also submitted concurrent Writs of Mandamus to the Georgia Supreme Court and to the Federal District Court. On August 31, 2005, Appellant submitted an Application for Appeal of ex parte Final Decree ruling of August 1, 2005 to the Georgia Supreme Court, and on September 29, 2005, Appellant was granted an appeal by the Georgia Supreme Court. However, in its subsequent ruling, the Georgia Supreme Court erroneously held on June 26, 2006 in Cormier v Cormier, Case# S06F0442, that a state judge was not required to halt the state case during a Federal removal in violation of 28 U.S.C. § 1446:

> "On June 13, 2005, the trial court entered an order denying Husband's second effort to remove the case to federal court, which informed all parties that the case would proceed to a pre-trial hearing on July 7, 2005, and that the trial would be held on August 1, 2005, in the Colquitt County Courthouse. (R 8:2)"

At the time of said state ruling, neither Appellant nor his counsel, Mr. Stephen Mackie were aware that Appellees Horkan and May were engaged in a political quid pro quo (R5). At no time did Appellees Horkan or May disclose their political involvement during said Federal removal to Appellant nor to his counsel, nor did they

disclose their conflicts of interest at any time whatsoever. On July 25, 2007, Appellees obtained an order to domesticate the Georgia Final Judgment order of August 1, 2005 to Virginia (R8), thereby engaging in unlawful interstate trafficking of forced-labor and alimony-peonage contracts under coercion, duress, threats of false imprisonment, and under color of law.

On June 2, 2009, Appellant filed his Verified Complaint with the district court as a continuing tort against Appellees. Thereafter, on June 17, 2009, the Georgia Attorney General's office filed a Motion to Dismiss and Motion to Stay the trial on behalf of Appellees Horkan and Perdue. Appellant replied to these Motions on July 1, 2009. On July 30, 2009, Appellee Alderman filed a Motion to Dismiss, a Motion to Stay and a Memorandum in support of the Motion to Dismiss with the district court. Appellant responded to this Motion on August 5, 2009. A "Motion for Partial Summary Judgment Against Defendant Horkan" (R4) was filed by Appellant on August 4, 2009 which was not reviewed by the district court.. Appellee Dwight May filed a Motion to Dismiss on July 30, 2009 and Appellant responded on August 17, 2009 and filed a supplemental Memorandum of Law (R3) regarding the relevance of Monell v. Department of Social Services, 436 U.S. 658 (1978) as it pertained to Appellee John Alderman and Colquitt County, Georgia. After receiving summons on August 5, 2009, Appellees Ann Buechler and Nancy Cormier filed a joint Motion

to Dismiss on August 16, 2009, to which Appellant responded on September 18, 2009 after an extension was granted by the district court on September 14, 2009. On February 11, 2010, the district court issued an Order (R2) on Motions to Dismiss Appellant's Verified Complaint and closed the case with its Final Judgement on February 12, 2010, and Appellant's "Motion for Partial Summary Judgment" was dismissed without reasoned opinion. Appellant timely filed his Notice of Appeal to the U.S. 11th Circuit Court of Appeals on March 9, 2010 to appeal the Order and Judgement of the district court issued on February 11 and 12, 2010 respectively.

B. Statement of the Facts

The material facts are clearly recited in Appellant's Verified Complaint (R1:6-9), "Motion for Partial Summary Judgment Against Defendant Horkan", Reports and Recommendations, and the Orders entered by the district court. Briefly, Appellant is a physician and resident of Newport News, Virginia. Appellee, Nancy Cormier, is a resident of Eustis, Florida and ex-wife of Appellant, and an actor in this civil rights lawsuit because she was following the current custom of local law and conspired to violate Appellant's civil rights. There were no minor children involved in the divorce proceedings and therefore custody and child support were never and are not at issue in this lawsuit. Appellee, Ann Buechler, is a resident of Eustis, Florida and mother of Appellee, Nancy Cormier; Appellee Ann Buechler enjoined the

state lawsuit against Appellant at time of final judgment in Georgia on August 1, 2005, and was following current custom of local law, and she is therefore an actor in this civil rights lawsuit. Appellee, Frank D. Horkan, is a Colquitt County Superior Court Judge, presiding in more than one county, and a long-time business and law partner of Appellee, Dwight May; Appellee Frank D. Horkan resides in Moultrie, Georgia, and is an actor in this civil rights lawsuit. Appellee, Dwight May, was an attorney of Appellee, Nancy Cormier, while also acting as treasurer and campaign manager for Appellee, Frank D. Horkan, during his re-election campaign and during state court proceedings and a Federal removal from May to July, 2005, and he is therefore an actor in this civil rights lawsuit. Besides their political entanglements, Appellees Frank D. Horkan and Dwight May have been business and law partners for over 20 years, and have established a pattern of quid pro quo behaviour during judicial proceedings by conspiring to violate Appellant's constitutional rights and protections. Appellee Frank D. Horkan intentionally refused to disclose his financial and political relationship of over twenty years with Appellee Dwight May to Appellant or his counsel at any time during the course of the state trial, nor during the Federal removal in 2005, nor during the subsequent appeal to the Georgia Supreme Court nor at any other time whatsoever. Appellee, George Ervin "Sonny" Perdue III, is the Governor of Georgia, who resides in Atlanta,

Georgia, and is the responsible party for *ultra vires* actions on the part of state judges and other public officials presiding in more than one county; Appellee, George Perdue, is therefore an actor in this civil rights lawsuit. Appellee John B. Alderman is the chairman of the Colquitt County Commissioners and he is an actor in this civil rights lawsuit because he represents Colquitt County, Georgia, and is the responsible party for providing judicial services to Appellee, Judge Frank D. Horkan, during his *ultra vires* conduct and deprivation of Appellant's constitutional and civil rights thereafter. Colquitt County, Georgia, is an actor in this civil rights lawsuit because it lacks Eleventh Amendment immunity and provided essential judicial services for Appellee Judge Frank D. Horkan, during his *ultra vires* conduct, and furnished the Appellees with law enforcement and imprisonment facilities under color of law to implement wrongful alimony-peonage contracts in violation of Federal law. Appellee Frank D. Horkan repeatedly threatened to have Appellant arrested and jailed beginning with hearing of March 8, 2005 if Appellant ever exercised his constitutional rights by removing his case to Federal court, thereby depriving Appellant under duress of his constitutional rights to Due Process and Equal Protection under both Georgia and U.S. Constitutions. Both Appellees, Frank D. Horkan and Dwight May, were made aware that Appellee Frank D. Horkan was proceeding illegally in a "rush to judgment", and in violation of 28 U.S.C. § 1446, from May to

July, 2005, despite submission of three Writs of Mandamus to the state court by Appellant on July 5, 2005 with copies to the Federal District Court and the Georgia Supreme Court. In his June 14, 2005 *ultra vires* order (R6), Appellee Frank D. Horkan unlawfully granted money to Appellee Dwight May, which was also issued in violation of Georgia Superior Court Rules §24.2. "Financial data required", prohibiting awards of attorney's fees unless a financial affidavit has been entered by both parties, even though no affidavits had ever been entered. On October 5, 2007, Appellees attempted to pursue Appellant across state lines to enforce unlawful forced-labor and alimony-peonage contracts and collection of unlawful debts against Appellant by using an order to domesticate the final judgment of the Georgia state court in Virginia (R8).

STANDARD OF REVIEW

The constitutional issues and other questions of law raised herein are legal issues ordinarily subject to *de novo* review by this Court. See, e.g., Lucero v. Operation Rescue, 954 F.2d 624, 627 (11th Cir.1992). The standard of review of a motion to dismiss is also *de novo*. Spain v. Brown & Williamson Tobacco Corp., 363 F.3d 1183, 1887 (11th Cir. 2004). In Eleventh Amendment cases, as in other cases, this Court "review[s] the district court's grant of summary judgment *de novo*, with all facts and reasonable inferences therefrom reviewed in the light most favorable to the nonmoving party." Harbert Int'l, Inc. v. James, 157 F.3d 1271, 1277 (11th Cir.

1998). The circuits that have addressed the issue have "unanimously concluded that 'the entity asserting Eleventh Amendment immunity has the burden to show that it is entitled to immunity.'" Woods v. Rondout Valley Central School Dist. Bd of Educ., 466 F.3d 232 (2d Cir. 2006) (quoting Gragg v. Ky. Cabinet for Workforce Dev., 289 F.3d 958, 963 (6th Cir. 2002)).

SUMMARY OF THE ARGUMENT

The district court erred in several key areas of law and procedure: 1) by granting a summary Motion to Dismiss the Appellant's Verified Complaint without holding an Evidentiary Hearing on vital dispositive issues surrounding the instant case, and then further erred by ordering a stay to block discovery of same; 2) by dismissing the Appellant's Verified Complaint without reviewing any of the constitutional infringements of Appellant's 13th and 14th Amendment rights by Appellees resulting from *ultra vires* conduct outside the judicial capacity of the state trial judge, Appellee Horkan, thereby contravening Stump v. Sparkman, 435 U.S. 349 (1978); 3) by summarily dismissing Appellant's 42 U.S.C. § 1983 and 42 U.S.C. § 1994 claims against Appellees without due consideration of probative facts or law and by failing to hold an evidentiary hearing to review same; 4) by failing to consider *ultra vires* conduct of state trial judge, Appellee Frank Horkan, under 28 U.S.C. § 1446(d) during a proper removal to the Federal district court; 5) by holding that there was no evidence of coercion

against alimony defendants in Georgia state courts in contravention to Hopkins v. Jarvis, 648 F.2d 981, *983 n. 2 (5th Cir.1981)*; 6) by failing to rule on Appellant's "Motion for Partial Summary Judgment" against Appellee Frank Horkan and evidentiary documentation therein; 7) by failing to review violations of Appellant's Right to a Fair Trial made impossible by the *quid pro quo* relationship between Appellees Horkan and May at time of state trial; 8) by failing to consider liability of Appellee John Alderman as a 42 U.S.C. § 1983 actor under Monell v. Department of Social Services, 436 U.S. 658 (1978); 9) by failing to review 42 U.S.C. § 1983 and § 1994 liability of Appellees Ann Buechler, Nancy Cormier and Dwight May as actors in a civil rights lawsuit under Dennis v. Sparks, 449 U.S. 24, 28 (1980) and Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982); and 10) by making pretrial prejudicial remarks expressing bias against Appellant's lawsuit.

ARGUMENT AND CITATION OF AUTHORITY

Because the district court failed to conduct an evidentiary hearing, it was neither possible to make a determination of the sufficiency of the Appellant's case, based on that evidence, nor was it possible for the Appellees to articulate a compelling state interest under the strict scrutiny standard of review to justify infringements of the Appellant's constitutional rights under the 13th

and 14th Amendments. See, generally, Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 929 (1992).

Appellees contend that Appellant's Verified Complaint raised no claim for relief against them or stated a claim as reiterated in the district court's Order to Dismiss (R2). However the district court is required to accept all well-pled factual allegations and reasonable inferences therefrom as true. *See* Jackson v. Birmingham bd. of Educ., 309 F.3d 1333, 1335 (11th Cir. 2002), Rosner v. U.S., 231 F. Supp.2d 1202, 1206 (S.D. Fla. 2002), Morrison v. Amway Corp., 323 F. 3d 920, 924, n.5 (11th Cir. 2003) and Oxford Asset Mgt. Ltd. V. Jaharis, 297 F.3d 1182, 1188 (11th Cir. 2002). The district court is limited in its review to only those averments found in the Verified Complaint or reference therein. *See* Brooks v. Blue Cross & Blue Shield of Fla., 116 F.3d 1364, 1368-69 (11th Cir. 1997), Rhodes v. Omega Research, Inc., 38 F. Supp.2d 1353, 1357-58 (S.D. Fla 1999), Future Tech Int'l, Inc. v. Tae II Media, Ltd., 944 F. Supp. 1538, 1561 (S.D. Fla. 1996). Therefore Appellant's Verified Complaint is only subject to dismissal if the Appellant can prove no set of facts to support his claims; if the alleged facts fail to state a cognizable theory for relief, See Harper v. Blockbuster Entm't Corp., 139 F.3d 1385 (11th Cir. 1998), Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 703 (11th Cir. 1985), Glen v. Club Mediterranee S.A., 365 F.Supp.2d 1263, 1273 (S.D. Fla. 2005); or if the Appellant's allegations legal issues precluded

relief, *See* Marshall County Bd. of Educ. V. Marshall County Gas. Dist., 992 F.2d 1171, 1174 (11th Cir. 1993). On the contrary, the Appellant presented a preponderance of facts as set forth above and in appendices to his "Motion for Partial Summary Judgement." (R4) However, the district court refused to review these facts, permit discovery, or hold an evidentiary hearing.

Appellees further maintained that they cannot be held accountable for violations of law because they are state officials and therefore immune from prosecution under the Eleventh Amendment to the U.S. Constitution. However, contrary to their contentions, under Ex Parte Young, 209 U.S. 123 (1908), Appellees can be held accountable when they act unlawfully, without authority, without jurisdiction or outside judicial capacity. In the case of Appellees Horkan and May, they clearly acted *ultra vires* during a proper Federal removal during the period from June to July, 2005, and Appellee Horkan displayed contempt and reckless disregard for Federal law in his order of June 14, 2005 (R6), by stating that he was not obligated to obey Federal law, specifically ignoring 28 U.S.C. § 1446 requiring that a state trial must be halted during a Federal removal. Violation of Federal law is also in direct contradiction to the recent U.S. Supreme Court decision in Howlett v. Rose, 496 U.S. 356 (1990) wherein the Justices held that all state officials, including state judges, must obey Federal law.

As a consequence, Appellant has been forced into a perpetual alimony-peonage contract and concomitant perpetual bankruptcy in violation of 42 U.S.C. § 1994, and contrary to U.S. Supreme Court decision in Bailey v Alabama, 219 U.S. 219 (1911), wherein the Court held that state-enforced peonage contracts are illegal and an impermissible infringement of 13th Amendment rights to Freedom from Involuntary Servitude. In addition, Appellees Horkan and May deliberately concealed their political relationship, whereby Appellee May acted as Appellee Horkan's campaign manager and treasurer for his re-election campaign (R5) during the time of Federal removal from May to July, 2005, making Plaintiff's right to a Fair Trial impossible. Moreover, Appellee Horkan, under color of law, awarded thousands of dollars to his political crony, Appellee Dwight May, in his *ultra vires* order of June 14, 2005, without jurisdiction or authority during said Federal removal in 2005, and therefore Appellees lose immunity under Stump v. Sparkman, 435 U.S. 349 (1978). Moreover, Appellees have forfeited their Eleventh Amendment immunity under Ex Parte Young because they unlawfully acted *ultra vires*, without jurisdiction and without proper authority, and outside their judicial capacity and engaged in corrupt practices. Appellee Perdue is the responsible actor for Appellee Horkan's *ultra vires* conduct.

At no time did the district court attempt an evidentiary hearing to determine the extent of

Appellees Horkan and May *ultra vires* conduct by violating a Federal removal. On the contrary, the district court failed to even mention *ultra vires* conduct in its Order to Dismiss of February 11, 2010 as a consequence of their violation of a Federal removal and 28 U.S.C. § 1446, nor did the district court consider their involvement in political collusion during the time of the state trial during May to July, 2005, thereby depriving Appellant the Right to a Fair Trial, to Due Process, Equal Protection and Privacy under the 5th and 14th Amendments to the U.S. Constitution.

Although Appellee Alderman cites state cases regarding immunity, Federal law does not recognize city and county officials as having 11th Amendment immunity and therefore Appellee Alderman, as chairman of the Colquitt County Commission, cannot make a claim of 11th Amendment immunity. Specifically, local government entities (e.g., a county, municipal corporation, or other political subdivisions of the state) cannot claim 11th Amendment immunity, see Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977) and Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 369 (2001). Appellee Alderman's contention that he has individual immunity is inapplicable because the 11th Amendment does not bar suit against state or county officials in their individual capacities, even if arising from their official acts, Hafer v. Melo, 502 U.S. 21, 30-

31 (1991), Cornforth v. University of Oklahoma Bd. of Regents, 263 F.3d 1129, 1133 (10th Cir. 2001); Gary A. v. New Trier High School Dist. No. 203, 796 F.2d 940, 945 (7th Cir. 1986). See also Jackson v. Georgia Dept. of Transp., 16 F.3d 1573 (11th Cir. 1994). It does not matter whether the individual capacity suit is to enforce Federal or state law. Sutta v. Acalanes Union High School Dist., 2001 WL 1720616, *3 (N.D.Cal. Oct. 3, 2001) (officers sued in their individual capacity for violations of state law can be liable for monetary damages). Any other possible state claims to 11th Amendment immunity by Appellee Alderman have been further precluded by the U.S. Supreme Court decisions in Ex Parte Young, 209 U.S. 123 (1908) and Stump v. Sparkman, 435 U.S. 349 (1978), as well as additional case law citations presented by Appellant in his Verified Complaint (R1:3-6). Appellee Alderman has conspired with the other Appellees to violate 42 U.S.C. § 1983 and 42 U.S.C. § 1994. by making possible coercion, extortion and collection of an unlawful debt against Appellant, and he is therefore a party to Appellant's RICO claims as well.

With regard to Appellees Ann Buechler, Nancy Cormier and Dwight May, for a challenged action committed by a person or persons not employed by the government, the under-color-of-law criteria focuses on the nature of the connections between the private actor(s) and the state. As held by the U.S. Supreme Court, when a private person

conspires with a state actor or actors, or officials for the purpose of an alleged conspiracy against a victim's civil rights, that connection clearly suggests actions under color of law[17]; see Dennis v. Sparks, 449 U.S. 24, 28 (1980) holding that private parties who corruptly conspired with a state judge acted "under color of law". Additionally, use of a state statute by a private actor, when combined with the presence of state officials, has been held by the High Court to signify state action.[18] In Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982), the Supreme Court further held that any creditor who has used a state statute for enforcement of an alleged debt had acted under color of law because, in attaching the debtor's property, with help from the judge, court clerk, sheriff or other state official, the creditor had further used state power. Moreover, assistance from state officials made the creditor a joint participant in state action. In the instant case, Appellees, Nancy Cormier and Ann Buechler, acted under color of law by using the Georgia Alimony Statutes O.C.G.A. §§ 19-6-(1-35)

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[17] Dennis v. Sparks, 449 U.S. 24, 28 (1980) "Private persons, jointly engaged with state officials ... are acting under color of law for purposes of § 1983 actions."

[18] Lugar v. Edmondson Oil Co., 457 U.S. 922, 939–42 (1982) "Constitutional requirements of due process apply ...whenever state officers act jointly with a private creditor in securing the property in dispute." Sniadach v. Family Finance Corp., 395 U. S. 337. "... that conduct is also action under color of state law, and will support a suit under § 1983." Pp. 457 U. S. 926-935.

to enforce an alleged debt through joint action and active encouragement of Appellees Horkan and May. Indeed, Appellee Horkan was willing to violate Federal law and incarcerate the Appellant, in concert with Appellees Nancy Cormier and Ann Buechler, in order to enforce an alleged debt against the Appellant.

In his Verified Complaint, Appellant rightfully asserted that he has been and continues to be forced and coerced, under threat of jail, into an unlawful alimony-peonage contract, under color of law, by Appellees. Because Plaintiff lacks a means of independent income, and because he has been forced into a state of perpetual bankruptcy, Appellant must now and forever labor to satisfy the obligation created by Appellees' unlawful alimony-peonage contract, in a state of involuntary servitude. Consequently, Appellees have impermissibly infringed the 13th Amendment and have violated the Federal Anti-Peonage statutes, 42 USC § 1994 et seq. to the detriment of Appellant. Appellees' erroneous citation of Loubser v. United States, 606 F. Supp. 2d 897 (N.D. Ind. 2009) refers to voluntary, legal alimony agreements, and not an unlawful peonage contract derived through corrupt and *ultra vires* conduct without jurisdiction, proper authority and outside judicial capacity. Loubser originated from the same Indiana district court that issued the now infamous Stump v Sparkman decision whereby an incapacitated woman was ordered to be involuntarily sterilized because the judge felt she

was "somewhat retarded"; this case was subsequently reversed by the U.S. Supreme Court which determined that the judge involved was not immune from prosecution. Furthermore, Loubser errs by narrowly interpreting involuntary servitude and peonage as only pertaining to "African slavery". Quite the opposite is true, as held by the U.S. Supreme Court which clearly articulated in Bailey v Alabama, 219 U.S. 219 (1911) and United States v. Kozminski, 487 U.S. 931, 942 (1998) that peonage contracts and involuntary servitude were not restricted to Civil War injustices, but that the 13th Amendment and 42 U.S.C. § 1994 et seq statutes were to be interpreted broadly to apply to all U:S. citizens and to all situations involving forced or coerced obligations. Moreover, peonage in any form is illegal under Federal law, and shall be considered an abomination against constitutional protections, civil rights and human rights. The Appellees would have this Court believe the preposterous assertion that alimony supersedes the U.S. Constitution, Federal statutory law and all the principles of Contract Law.

In addition, the Appellant directs this Court to the pleadings and record to incorporate the argument and review the issues in United States v. Kozminski, 487 U.S. 931, 943 (1998) , where the U.S. Supreme Court defines involuntary servitude leniently in a criminal statute context, "in every case in which this Court had found a condition of involuntary

servitude, the victim had no available choice but to work or be subject to legal sanction." In particular, the U.S. Supreme Court held:

> "...we hold that, for purposes of criminal prosecution under 241 or 1584, the term 'involuntary servitude' necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion." Kozminski 487 at 952. "We hold only that the jury must be instructed that compulsion of services by the use or threatened use of physical or legal coercion is a necessary incident of a condition of involuntary servitude." Kozminski 487 at 953.

> "The primary purpose of the [13th] Amendment was to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War, *but the Amendment was not limited to that purpose*;" (Emphasis added) citing Butler v. Perry, 240 U.S. 328, 332 (1916). Id at 942

The 13th Amendment projected an expansive freedom.

> "While the general spirit of the phrase 'involuntary servitude' is easily comprehended, the exact range of conditions it prohibits is harder to define. The express exception of involuntary servitude imposed as a punishment for crime provides some guidance. The fact that the drafters felt it necessary to exclude this situation indicates that they thought involuntary servitude includes at least situations in which the victim is compelled to work by law." Id at 943. "Looking behind the broad statements of purpose to the actual holdings, we find that in every case in which this Court has found a condition of involuntary servitude, the victim had no available choice but to work or be subject to legal sanction." Id at 943

The district court erroneously argued in the final order of February 11, 2010 (R2: 14) that there is no evidence of coercion being used within the Georgia state court system as a means of forcing defendants to pay alimony debts. Quite the opposite is true. In fact, the Fifth Circuit U.S. Court of Appeals ruled in Hopkins v. Jarvis, 648 F.2d 981, *983 n. 2 (5th Cir.1981)* that coercion of alimony is a common practice in Georgia courts:

> One defense to either civil or criminal contempt for failure to pay alimony and child support would be that the payments were in fact timely made... Ensley v. Ensley, 239 Ga. 860, 238 S.E.2d 920 (1977); Carlton v. Carlton, 44 Ga. 216 (1871)... **The purpose of civil contempt is to coerce compliance with the [alimony] court order**; (emphasis added) if the payments are current when the alleged contemnor appears in court, a coercive sentence would be inappropriate. Hopkins v. Hopkins, 244 Ga. 66, 257 S.E.2d 902 (1979); Ensley v. Ensley, supra.

In essence, the use of "contempt" citations in Georgia state courts, as it is in all state courts, has become a euphemism for "coercion" of alimony payments for state-enforced peonage, regardless of the legality. In the instant case, the Appellees acted upon *ultra vires* orders made by Appelle Frank Horkan outside his judicial capacity, and therefore subsequent rulings constituted an illegal peonage contract. When the Georgia Legislature repealed the doctrine of necessaries in 1979, it effectively made married Georgians economic independents and made alimony a dubious practice at best, tantamount to a state-enforced peonage contract. Georgians are now economic independents in marriage, and there can be no compelling state interest to strip

one party of his or her constitutional protections under the 13th and 14th Amendments and statutory protections under 42 U.S.C. § 1994. In its Order to Dismiss (R1: 14), the district court argued erroneously that the U.S. 11th Circuit Court of Appeals held in Greenberg v. Zingale, 138 Fed. App'x. 197, 200 (11th Cir. June 20, 2005), "alimony is not the type of subject matter the 13th Amendment was designed to address." However this ruling contradicts the findings in both Bailey v. Alabama and U.S. v. Kozminski. Moreover, the legality of the alimony ordered by Appellee Horkan was tainted by his *ultra vires* conduct during a Federal removal, his violation of Federal law, and impermissible infringement of Appellant's constitutional protections under the 13th and 14th Amendments. Furthermore, even the Greenberg district court in Florida held that alimony falls within the Privacy Protected zone of marriage. Accordingly, Appellant's Privacy Rights were repeatedly violated and impermissibly infringed by all Appellees through Appellee Horkan's *ex parte* and *ultra vires* orders issued outside his judicial capacity. See Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 859 (1992), Zablocki v. Redhail, 434 US 374, 384-385 (1978) (citing Cleveland v Board of Education, 414, U.S. 632, 639-640, (1974)); Littlejohn v. Rose, 786 F.2d 785, 786 (6th Cir. 1985); Griswold v. Connecticut, 3818 U.S. 479, 486 (1965); and Carey v. Population Serv. Int'l., 431 U.S. 678, 684-685 (1977).

This injustice is further compounded when the yoke of alimony is forced upon a Georgian responding in a divorce proceeding, as in the instant case, and after asserting his right of Federal removal to seek review of Federal violations by the state court, has said removal violated by same. In particular, 28 U.S.C § 1446(d) unambiguously declares that the state court was divested of all jurisdiction after a proper removal was effected on May 24, 2005:

> "Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

Moreover, 28 U.S.C. § 1446 governs the procedure for Removal of a state action to a Federal court. By attempting to block a Federal removal, Appellee Frank D. Horkan was acting outside his judicial capacity, effectively obstructing justice and denying Appellant his Rights to Due Process and Equal Protection guaranteed him under the 14th Amendment. In a civil action, the filing of the notice or removal "shall effect the removal and the state court shall proceed no further unless and until the case is

remanded." Id. at § 1446(d). In fact, a state court has a "duty ... to proceed no further in the cause." Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882); Hyde Park Partners, L.P. v. Connolly, 839 F.2d 837, 842 (1st Cir. 1988).

Since 1882, courts have consistently held that upon the filing of the petition for removal, the jurisdiction of the state court absolutely ceases, and that of the Federal court immediately attaches. Steamship, 106 U.S., at 122-23. Accordingly, upon the filing of the notice of removal, unless and until remand, all further proceedings in state court are void *ab initio* because they are in fact *coram non judice*. Id.; see Hyde Park Partners, 839 F.2d, at 842 (hearing and temporary restraining order issued by state court void *ab initio* where entered following removal to federal court); Polyplastics, Inc. v. Transconex, Inc., 713 F.2d 875, 880 (1st Cir. 1983) (citing E.D. Systems Corp. v. Southwestern Bell Telephone, 674 F.2d 453, 458 (5th Cir. 1982) and Arango v. Guzman Travel Advisers Corp., 621 F.2d 1371, 1374, 1375 (5th Cir. 1980) for the proposition that post-removal Civil No. 04-2288(DRD) 3 proceedings in state court are void *ab initio* once the case is removed; Sweeney v. Resolution Trust Corp., 16 F.3d 1, 4 (1st Cir. 1994) ("purported judgment" entered by state court void *ab initio* where entered following removal to federal court); Hernandez-Lopez v. Com. of Puerto Rico, 30 F.Supp.2d 205, 211 (D. P.R. 1998); accord In re Diet Drugs, 282 F.3d 220, 231-232 (3d Cir. 2002); State of South Carolina v.

Moore, 447 F.2d 1067, 1073 (4th Cir. 1971); Lowe v. Jacobs, 243 F.2d 432, 433 (5th Cir. 1957); Ward v. Resolution Trust Corp., 972 F.2d 196, 198 (8th Cir. 1992); California ex rel. Sacramento Metropolitan Air Quality Management Dist., v. United States, 215 F.3d 1005, 1011 (9th Cir. 2000).

The removal of a case from state court to Federal court effects a transfer of the entire action, including all the parties and all the claims, to the federal court. City of Gainesville v. Brown-Crummer Investment Co., 277 U.S. 54, 60 (1928); Arango v. Guzman Travel Advisors Corp., 621 F.2d 1371, 1376 (5th Cir. 1980); Murphy v. Kodz, 351 F.2d 163, 167 (9th Cir. 1965); Hartlein v. Illinois Power Co., 601 N.E.2d 720, 726 (Ill. 1992). A defendant, upon filing a notice of removal, "shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk" of the state court, which effects the removal. 28 U.S.C. § 1446(d). At that point, "the [s]tate court shall proceed no further unless and until the case is remanded." Id. Hence, during the removal of May through July, 2005, the state trial court was without jurisdiction whatsoever and consequently Appellee Horkan acted well outside his judicial capacity when he issued orders and scheduled hearings and knowingly violated a Federal removal. Indeed, he even stated in his order of June 14, 2005 that he intended to violate a proper Federal removal. The Georgia Supreme Court also erred by holding in its decision of June 26, 2006 (R7) that a state

judge has the power to "veto" Federal removal. No state judge has this power. Therefore Appellee Horkan is liable for any consequences deriving from his *ultra vires* conduct. In addition, his political crony, Appellee May, is liable as a party to extortion and peonage by virtue of the June 14, 2005 orders "awarding" him $3,000 during a Federal removal and during Appellee Horkan's election campaign where Appellee May acted as his treasurer and campaign manager. Both of these Appellees have a long-time business and legal relationship that would be revealed in detail by discovery.

"After compliance with the removal statute[,] the jurisdiction of the [s]tate court is suspended until there has been a remand." Levine v. Lacy, 204 Va. 297, 300, 130 S.E.2d 443, 445 (1963); accord Yarnevic v. Brink's, Inc., 102 F.3d 753, 754 (4th Cir. 1996); Maseda v. Honda Motor Co., 861 F.2d 1248, 1254 (11th Cir. 1988); Allman v. Hanley, 302 F.2d 559, 562 (5th Cir. 1962). "Any subsequent proceedings in state court on the case are void *ab initio*." Maseda, 861 F.2d at 1254-55 (citing Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882)); accord South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971). A later determination that the removal petition was not proper does not change that outcome. See Maseda, 861 F.2d at 1254 n.11; Moore, 447 F.2d at 1073; United States v. Silberglitt, 441 F.2d 225, 227 (2d Cir. 1971); Lowe v. Jacobs, 243 F.2d 432, 433 (5th Cir. 1957). A proper filing of a notice of removal immediately strips the state court of

its jurisdiction. 28 U.S.C. § 1446(d), South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971).

It should also be noted that the Honorable Hugh Lawson had previously threatened sanctions against Appellant's raising issues relating to alimony in an earlier Order to Dismiss in August 10, 2004. *See* Order, Cormier v. Green et al, No 6:04-CV-19 (M.D. Ga. Aug. 10, 2004), pursuant to Appellant's challenging the Georgia Alimony Statutes O.C.G.A. §§ 19-6-1 et seq, as infringing upon 14th Amendment Privacy rights as delineated in Roe v. Wade, 410 U.S. 113, 151 (1973) and in a subsequent "Motion for Reconsideration". The Honorable Hugh Lawson stated in said Order:

> "... to the extent that Cormier's claims are predicated on 42 U.S.C.A. § 1983, federal law creates a cause of action. Therefore, the Court finds that a federal question is presented on the face of Cormier's complaint."

Despite this finding, the Honorable Hugh Lawson held that ruling in Appellant's favor would disrupt the entire Georgia legal system. Because the Appellant had raised a valid Federal Question, original jurisdiction was created under 28 U.S.C. § 1331 and therefore the district court should have proceeded with trial instead of dismissing the case. And although Appellant's

instant case has not challenged the Georgia Alimony Statutes under the Privacy provisions of the 14th Amendment, it is clear that the Honorable Hugh Lawson's current Order to Dismiss is the result of his previous prejudicial sentiments and remarks against the Appellant and the issue of alimony in general.

CONCLUSION

> " [W]here the officer's powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions. The officer is not doing the business which the sovereign has empowered him to do or he is doing it in a way which the sovereign has forbidden. His actions are *ultra vires* his authority and therefore may be made the object of specific relief. Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 690 (1949)

It is essential for public officials to obey Federal laws, as asserted by the U.S. Supreme Court in Howlett v. Rose, 496 U.S. 356 (1990). When a high-placed public official, especially a state judge such as Appellee Frank D. Horkan, deliberately and maliciously violates Federal law, despite three Writs of Mandamus, it corrupts the entire legal system. For the district court to ignore said violations of law, by Appellee Horkan and the Appellee conspirators, sets a dangerous

precedent as well as reflecting upon a lack of impartiality. Therefore, Appellant hereby requests this Court to remand the instant case back to the district court to proceed with discovery and prosecution of the trial. Furthermore, due to pretrial prejudicial remarks and in the interests of justice, Appellant hereby requests that this Court grant a change of venue to the Athens, Georgia division of the Middle District of Georgia.

Respectfully submitted,

/s/ Denny C. Cormier, Pro Se

Dated: April 15, 2010

CERTIFICATE OF SERVICE

I, Denny C. Cormier, hereby certify that on April 15, 2010 the original and six (6) copies of the foregoing brief, and one diskette, were sent via U.S. Express Mail to the United States Court of Appeals for the Eleventh Circuit, and one (1) copy of the foregoing brief, was sent via U.S Mail to James A. Garland, Attorney for Defendant John Alderman, 411 Gordon Avenue, Thomasville, GA 31792, Robert D. Jewell, Attorney for Appellees Ann Buechler, Nancy Cormier and Dwight May, 12 South Main Street, Moultrie, GA 31768, and Meghan R. Davidson, Assistant Attorney General for Defendants Horkan and Perdue, 40 Capitol Square SW, Atlanta, GA 30334.

/s/ Denny C. Cormier, Pro Se

Dated: April 15, 2010

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). The brief contains 6,811 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft Word 2000 in Times New Roman, 14 pt.

/s/ Denny C. Cormier, Pro Se

Dated: April 15, 2010

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No: 10-11089

Denny C. Cormier, Plaintiff - Appellant

v. Honorable Frank D. Horkan *et al*,

Defendants - Appellees

Appeal from U.S. District Court for the Middle District of Georgia (7:09-cv-00068-HL)

PLAINTIFF-APPELLANT AMENDED REPLY BRIEF

Appellant hereby replies to the erroneous allegations in Briefs of named Appellees as follows:

1. Thirteenth Amendment and Peonage Claims Sufficiently Stated: In his Verified Complaint (R 1), Appellant asserted that he has been and continues to be forced and coerced, under threat of jail, into an unlawful alimony-peonage contract, under color of law, by named Appellees due to Appellee Horkan's proceeding with the state trial during a proper Federal removal causing irreparable damages to Appellant that continue into the present. Appellees claim that the 13th Amendment only applies to situations involving African slavery or situations almost identical to African slavery is

egregiously in error. To wit, in Bailey v. Alabama, 219 U.S. 219 (1911), the U.S. Supreme Court held:

> "While its immediate concern was African slavery, the Thirteenth Amendment was a charter of universal civil freedom for all persons of whatever race, color, or estate, under the flag.
>
> The words 'involuntary servitude' have a larger meaning than slavery, and the Thirteenth Amendment prohibited all control by coercion of the personal service of one man for the benefit of another."

The High Court correctly held in Bailey that 13th Amendment and the term "involuntary servitude" to "have a much larger meaning than slavery, and that the 13th Amendment prohibited all control by coercion of personal service of one man for the benefit of another" (*Id*). Because Appellant lacks a means of independent income, he has now and forever been forced and coerced into a state of perpetual debt servitude and bankruptcy by Appellees, through "control by coercion of the personal service of one man for the benefit of another" (*See* Bailey v Alabama). Therefore, Appellees have impermissibly infringed the 13th Amendment and violated the Federal Anti-Peonage statutes, 42 U.S.C. § 1994 et seq. to the detriment of

Appellant. Appellees' erroneous citation of Loubser v. United States, 606 F. Supp. 2d 897 (N.D. Ind. 2009) refers to voluntary, legal alimony agreements, and not an unlawful peonage contract derived through corrupt and *ultra vires* conduct of Appellees without jurisdiction, proper authority or outside judicial capacity. Furthermore, Appellees Horkan and Perdue further err by claiming that United States v. Kozminski, 487 U.S. 931, 942 (1998) supports their narrowly construed argument that the 13th Amendment only applies to African slavery. To the contrary, the U.S. Supreme Court held in U.S. v. Kozminski:

> "... the term 'involuntary servitude' necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury or by the use or threat of coercion through law or the legal process." (Pp. 939-953)

Accordingly, Appellant has been and continues to be under "threat of coercion through law or legal process" to force him into an unlawful alimony-peonage contract. Consequently, the 13th Amendment and 42 U.S.C. § 1994 et seq and its associated criminal statutes, 18 U.S.C. § 1581, § 1584 and § 1589(2)(3), must be interpreted broadly to apply to all U.S. citizens, to all situations involving forced or coerced obligations or labor. Therefore, Appellant sufficiently stated his 13th Amendment

claims and related claims under 42 U.S.C. § 1983 and § 1994 et seq.

2. Appellant's Other Claims Sufficiently Plead: Appellant sufficiently plead his entire case in the district court. Indeed, his case is actually quite straightforward. He correctly alleged that Appellee Horkan acted *ultra vires*, without authority or jurisdiction, during a proper Federal removal (R 6), and conspired with the other named Appellees to coerce and force Appellant into a perpetual and unlawful alimony-peonage contract, perpetual bankruptcy and involuntary servitude, to benefit Appellee Nancy Cormier, thereby causing Appellant irreparable and continuing financial harm. Appellees further extorted Appellant by repeatedly demanding payment of unlawful debts for thousands of dollars, under threats of fines and imprisonment, and other forms of legal coercion, in violation of the Federal RICO Statutes 18 U.S.C. §1951, §1962 et seq. More generally, when a Federal court considers sufficiency of a complaint, before reception of any evidence, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims, Scheuer v. Rhodes, 416 U.S. 232 (1974). Although recovery may appear remote and unlikely, that however is not the test. Moreover, it is well established that, in passing on a motion to dismiss, the allegations of the complaint should be construed favorably to the pleader and under Fed. R. Civ. P. 12(b)(6), where the district court assumes that the plaintiff's allegations are true. When officials claim qualified immunity as a defense, some

courts consider motions to dismiss under Rule 12(b)(6).[19] However, qualified immunity is an affirmative defense[20]. Accordingly, Fed. R. Civ. P. 8(c) requires that affirmative defenses be raised in an answer. The High Court recently found: "We refused to change the Federal Rules governing pleading by requiring the plaintiff to anticipate the immunity defense."[21] Appellant's claims were well plead and the district court erred by dismissing his case without any kind of evidentiary hearing, and by not considering reasonable inferences therefrom.[22] The district court is limited in its review to only

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[19] *See, e.g.*, Fortner v. Thomas, 983 F.2d 1111, 1114–15 (3d Cir. 1988); *also* Triad Assocs., Inc. v. Robinson, 10 F.3d 492 (7th Cir. 1993).

[20] Gomez v. Toledo, 446 U.S. 635 (1980).

[21] Crawford-El v. Britton, 523 U.S., 118 S. Ct. 1584, 1595 (1998) (citing with approval Gomez v. Toledo, 446 U.S. 635, 639-40 (1980)). The Court also expressed its reluctance to legislate pleading requirements: "our cases demonstrate that questions regarding pleading, discovery, and summary judgment are most frequently and most effectively resolved either by the rulemaking process or the legislative process").

[22] Jackson v. Birmingham bd. of Educ., 309 F.3d 1333, 1335 (11th Cir. 2002), Rosner v. U.S., 231 F. Supp.2d 1202, 1206 (S.D. Fla. 2002), Morrison v. Amway Corp., 323 F. 3d 920, 924, n.5 (11th Cir. 2003) and Oxford Asset Mgt. Ltd. V. Jaharis, 297 F.3d 1182, 1188 (11th Cir. 2002).

those averments found in the Complaint or references therein.[23]

3. Liability of State Appellees Under § 1983: Appellee Horkan proceeded, under color of law and without jurisdiction or authority, during a proper Federal removal, to levee debts against Appellant in his *ultra vires* Order of June 14, 2005 (R 6) to force and coerce Appellant into an unlawful alimony-peonage contract to the benefit of Appellees Dwight May, Ann Buechler and Nancy Cormier under coercive threats of jail and fines and awarding thousands of dollars. In addition, Appellee Horkan forced and coerced Appellant by impermissibly infringing his right to Freedom from Involuntary Servitude under the 13th Amendment as well as violating 18 U.S.C. § 241, 18 U.S.C. § 1581, § 1584 and § 1589(2)(3) through forced and coerced payment and collection of an unlawful debt, and further violating 42 U.S.C. § 1994 and § 1983 as well as the civil remedy provisions under the Federal RICO Statutes, 18 U.S.C. §1951, §1962 et seq. As the responsible party for the State of Georgia and for Appellee Horkan's *ultra vires* conduct, Appellee Purdue is also liable, in his individual and official capacities. In Monroe v. Pape, 365 U.S. 167 (1961) the U.S. Supreme Court articulated three purposes that underlay the 42 U.S.C. § 1983 statute: "1) 'to override certain kinds of state laws'; 2) to provide 'a

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[23] *See* Brooks v. Blue Cross & Blue Shield of Fla., 116 F.3d 1364, 1368-69 (11th Cir. 1997), Rhodes v. Omega Research, Inc., 38 F. Supp.2d 1353, 1357-58 (S.D. Fla 1999), Future Tech Int'l, Inc. v. Tae II Media, Ltd., 944 F. Supp. 1538, 1561 (S.D. Fla. 1996.).

remedy where state law was inadequate'; and 3) to provide 'a federal remedy where the state remedy, though adequate in theory, was not available in practice.'" All three of these conditions have been encountered in the instant case.

4. Eleventh Amendment and Other Immunity Invalidated: Appellees Horkan and Perdue contend they are state officials and therefore have "absolute immunity" from liability or prosecution under the 11th Amendment. Such a contention is absolutely false and erroneous. Under Ex Parte Young, 209 U.S. 123 (1908), Appellees can be held accountable when they act unlawfully, without authority, without jurisdiction or outside judicial capacity. In the case of Appellees Horkan and May, they clearly acted *ultra vires* during a proper Federal removal during the period of May to July, 2005, and Appellee Horkan displayed contempt and reckless disregard for Federal law in his order of June 14, 2005 (R 6), stating that he was not required to obey Federal law, contrary to Howlett v. Rose, 496 U.S. 356 (1990), and in violation of 28 U.S.C. § 1446 requiring that a state trial must be halted during a Federal removal. As a result, Appellant has been forced into a perpetual alimony-peonage contract and perpetual bankruptcy. Appellees Horkan and May failed to reveal their political relationship at time of state trial, whereby Appellee May acted as Appellee Horkan's campaign manager and treasurer for his re-election campaign during the time of Federal removal from May to July, 2005, making Appellant's right to Due Process and a Fair Trial impossible. Moreover, Appellee Horkan,

under color of law, awarded thousands of dollars to his political crony, Appellee Dwight May, in his *ultra vires* order of June 14, 2005 (R 6). Therefore Appellees lose immunity as held in Stump v. Sparkman, 435 U.S. 349 (1978). Additionally, state judges and officials can lose 11th Amendment and other immunity when acting outside their judicial capacity: King v. Love, 766 F.2d 962, 968 (6th Cir.), cert. denied, 474 U.S. 971, 106 S.Ct. 351, 88 L.Ed.2d 320 (1985)(although setting bond on an arrest warrant is a judicial act, the act of deliberately misleading the police officer who was to execute the warrant about the identity of the person sought was nonjudicial); Sevier v. Turner, 742 F.2d 262 (6th Cir.1984)(juvenile court judge's initiation of criminal prosecution and civil contempt proceeding against father for child support in arrears constituted nonjudicial acts). In New Alaska Development Corporation v. Guetschow, 869 F.2d 1298 (9th Cir.1988) receiver appointed by state court to manage business assets of an estate was not absolutely immune from allegations that he stole assets or slandered parties, as such alleged acts were not judicial; Harper v. Merckle, 638 F.2d 848 (5th Cir.), cert. denied, 454 U.S. 816, 102 S.Ct. 93, 70 L.Ed.2d 85 (1981)(holding a contempt proceeding and ordering plaintiff incarcerated were not judicial acts where controversy that led to incarceration did not center around any matter pending before the judge, but around domestic problems of plaintiff former wife who worked at the courthouse); Harris v. Harvey, 605 F.2d 330 (7th Cir.1979), cert. denied, 445 U.S. 938, 100 S.Ct. 1331, 63 L.Ed.2d 772

(1980)(allegedly repeated communications to the press and city officials which were critical of police lieutenant, and the improper instigation of criminal proceedings against the lieutenant by judge as part of a racial campaign to discredit lieutenant were not judicial acts).

5. No "Partial" Jurisdiction Under Federal Removal: Although Appellant cited considerable case law on lack of state-court jurisdiction during a Federal removal, he reiterates herein considering the extent to which Appellees Horkan and Perdue have gone to erroneously contend *de novo* that the state court retains a sort of "partial" jurisdiction under Federal removal. The Appellant briefly summarizes his arguments to the contrary. In particular, 28 U.S.C § 1446(d) unambiguously declares that the state court was divested of all jurisdiction during the proper Federal removal effected on May 24, 2005:

> "Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

Moreover, 28 U.S.C. § 1446 governs the procedure for Removal of a state action to a Federal court. By attempting to block a Federal removal, Appellee

Horkan was violating Federal law without judicial capacity, effectively obstructing justice and attempting to create a constructive fraud, while denying Appellant his Rights to Due Process and Equal Protection guaranteed him under the 14th Amendment. In fact, a state court has a "duty ... to proceed no further in the cause."[24] Since 1882, courts have consistently held that upon the filing of the petition for removal, the jurisdiction of the state court absolutely ceases, and that of the Federal court immediately attaches.[25] Accordingly, upon the filing of the notice of removal, unless and until remanded, all further proceedings in state court are void *ab initio* because they are in fact *coram non judice.* Id.; see Hyde Park Partners, 839 F.2d, at 842 (hearing and temporary restraining order issued by state court void *ab initio* where entered following removal to federal court); Polyplastics, Inc. v. Transconex, Inc., 713 F.2d 875, 880 (1st Cir. 1983) (citing E.D. Systems Corp. v. Southwestern Bell Telephone, 674 F.2d 453, 458 (5th Cir. 1982) and Arango v. Guzman Travel Advisers Corp., 621 F.2d 1371, 1374, 1375 (5th Cir. 1980) for the proposition that post-removal Civil No. 04-2288(DRD) proceedings in state court are void *ab initio* once the case is removed; Sweeney v. Resolution Trust Corp., 16 F.3d 1, 4 (1st Cir. 1994) ("purported judgment" entered by state court void *ab initio* where entered following removal to federal court); Hernandez-Lopez v. Com. of Puerto Rico, 30

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[24] Steamship Co. v. Tugman, 106 U.S. 118, 122 (1882); Hyde Park Partners, L.P. v. Connolly, 839 F.2d 837, 842 (1st Cir. 1988).

[25] Steamship, 106 U.S., at 122-23.

F.Supp.2d 205, 211 (D. P.R. 1998); accord In re Diet Drugs, 282 F.3d 220, 231-232 (3d Cir. 2002); State of South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir. 1971); Lowe v. Jacobs, 243 F.2d 432, 433 (5th Cir. 1957); Ward v. Resolution Trust Corp., 972 F.2d 196, 198 (8th Cir. 1992); California ex rel. Sacramento Metropolitan Air Quality Management Dist., v. United States, 215 F.3d 1005, 1011 (9th Cir. 2000). Hence, the removal of a case from state court to Federal court effects a transfer of the entire action and jurisdiction, including all the parties and all the claims, to the Federal court.[26]

6. Claim for 42 U.S.C. § 1985 Adequately Stated: Appellant asserts that under 42 U.S.C. § 1985(3) that Appellees conspired to willfully and maliciously deprive him, both directly and indirectly, of the Equal Protection of the laws, and of equal privileges and immunities under the laws. Interpreting §1985(3), the Supreme Court justices found in Griffin v. Breckenridge 403 US 88 (1971):

> "The provision continues, specifying the motivation required 'for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of

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[26] City of Gainesville v. Brown-Crummer Investment Co., 277 U.S. 54, 60 (1928); Arango v. Guzman Travel Advisors Corp., 621 F.2d 1371, 1376 (5th Cir. 1980); Murphy v. Kodz, 351 F.2d 163, 167 (9th Cir. 1965); Hartlein v. Illinois Power Co., 601 N.E.2d 720, 726 (Ill. 1992).

> the laws, or of equal privileges and immunities under the laws.'"

Thus, Appellant correctly claimed Appellees have conspired to prevent him by coercion, force, intimidation, and threats; to injure his person and property, and to deprive him of having and exercising rights and privileges as a citizen of the United States. Appellant's action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the Appellees, is proper.

7. Rooker-Feldman Abstention Inapplicable: Although the district court did not invoke the Rooker-Feldman abstention, the Appellant replies to this erroneous allegations by Appellees for the sake of clarity. Reiterating from Appellant-Plaintiff's Verified Complaint (R 1), the Rooker-Feldman abstention is inapplicable because infringements of the 5th, 13th and 14th Amendments and violations of the Federal statutes addressed in the instant case have never been reviewed on merits before the district court, nor have they been reviewed in the state court. In addition, the district court has jurisdiction to review the instant case based upon the findings in Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 125 S. Ct. 1517, 1527 (2005): "When there is parallel state and federal litigation, Rooker-Feldman is not triggered simply by the entry of judgment in state court. *See*, e.g., McClellan v. Carland, 217 U. S. 268, 282 (1910)."

8. Statute of Limitations Inapplicable: Although the district court did not make a finding in regard to "statute of limitations", Appellant nevertheless

replies in the interest of clarity. Technically, 42 U.S.C. § 1983 has no specific statute of limitations. But it has often been associated with state statutory limitations governing state tort law, including principles of tolling and continuing torts. Georgia is a continuing tort state and permits tort-tolling. Appellant has suffered continuing damages to his personal property in the form of a perpetual, unlawful alimony-peonage contract, forcing him into perpetual bankruptcy. Hence, Appellant refers the Court to the four-year statute of limitations under Georgia's O.C.G.A. 9-3-30 and 9-3-32 governing personal property torts in Georgia, and to O.C.G.A. 9-3-99 which provides for a six-year statute of limitation whenever probable criminal conduct is involved by tortfeasors, under 18 U.S.C. § 241, 18 U.S.C. § 1581, § 1584 and § 1589(2)(3), as held in Tucker v Southern Wood 28 F.3d 1089 (11th Cir. 1994). Furthermore, Appellees filed an order to domesticate their unlawful alimony-peonage contract in Virginia in October 5, 2007 (R 8), across state lines as a continuing tort, well within statute of limitations for personal and personal property injury. Moreover, Appellant only became aware of Appellees Horkan and May's political quid pro quo relationship in 2008, and consequently tort-tolling provides that statute of limitations for damages alleged by Appellant had only tolled for one year; plus he timely filed his Federal RICO claim, having a four year statute of limitation.

9. Liability of Local and Private Appellees Under § 1983: Appellees erroneously assert that private parties cannot be held liable under 42 U.S.C. § 1983. However, whenever a

private person acts jointly with state official(s) under-color-of-law, that private actor can indeed possess § 1983 liability. In particular, when a private person conspires with a state actor or actors, or officials to conspire against a plaintiff's civil rights, that connection clearly suggests actions under color of law[27]; see Dennis v. Sparks, 449 U.S. 24, 28 (1980), holding, "Private persons, jointly engaged with state officials in a challenged action, are acting 'under color of law' for purposes of 1983 actions." Additionally, use of a state statute by a private actor, combined with the presence of state officials, has been held to signify state action.[28] Moreover, in Lugar, the Supreme Court held that any creditor who used a state statute for enforcement of an alleged debt acted "under color of law" because, in attaching the debtor's property, with help from the judge, court clerk, sheriff or other local or state official, the creditor had further used state power. In the instant case, the Appellees, Nancy Cormier and Ann Buechler, acted under color of law by using the Georgia Alimony Statutes to enforce an alleged debt through joint action and active encouragement by Appellees Horkan and May, and through supporting facilities of Appellees Alderman and Colquitt County. Indeed, Appellee Horkan was willing to act *ultra vires* and violate a Federal removal to coerce Appellant through incarceration in a pseudo-criminal proceeding, in concert with Appellees Nancy Cormier and Ann Buechler, in order to enforce an alleged debt against the Appellant. At the time of the state trial in June, 2005, Appellees Horkan and May were also involved in quid pro

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[27] Dennis v. Sparks, 449 U.S. 24, 28 (1980) ("The action against the private parties accused of conspiring with the judge is not subject to dismissal.")

[28] Lugar v. Edmondson Oil Co., 457 U.S. 922, 939–42 (1982) ("... if the challenged conduct of the creditor constitutes state action ... then that conduct is also action under color of state law, and will support a suit under § 1983.")

quo political activities as part of Appellee Horkan's re-election campaign without notifying Appellant then nor any time thereafter (R 5). Therefore, Appellees were jointly engaged with state officials in the collection of an unlawful debt through a peonage contract in violation of 42 U.S.C. § 1994 and consequently have tort liability under 42 U.S.C. § 1983 as well as the civil remedy provisions under the Federal RICO Statutes, 18 U.S.C. §1951, §1962 et seq. Liability by local governments and their officials is clearly established under Monell v. Department of Social Services, 436 U.S. 658 (1978), especially where unconstitutional policy statements, ordinances, regulations, or decisions have been formally adopted and promulgated by the governing body itself, or by subordinate agency thereof. For instance, in Monell, official decisions by local governments are considered as customary practice.[29] In the instant case, it was the official policy of Colquitt County, under direction of Appellees Alderman and Colquitt County, to permit Appellee Horkan to routinely jail defendants in a civil lawsuit, such as those accused of nonpayment of alimony, in Colquitt County jail facilities for purposes of coercion and false imprisonment in a pseudo-criminal proceeding without benefit of protections afforded to criminal defendants to ensure a Fair Trial, Due Process and Equal Protection under the 5th and 14th Amendments as well as encouraging impermissible infringements of Appellant's right to Freedom from Involuntary Servitude under the 13th Amendment. Said policies have been posted

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[29] *See also* City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981) (vote of City Council to cancel license for rock concert was official decision for Monell purposes); Owen v. City of Independence, 445 U.S. 622 (1980) (personnel decision made by City Council constitutes official city policy). Note that in both Fact Concerts and Owen, decisions officially adopted a governmental entity itself need not possess general or recurring applications to constitute official "policy."

on the Colquitt County Internet website, http://www.ccboc.com/courts.htm.

10. Appellant Entitled to Damage Award and Other Relief: Because Appellees have exhibited criminal conduct and reckless disregard for the law, Appellant is entitled to declaratory, equitable and injunctive relief. Furthermore, Appellant requests that this Court grant him compensatory and punitive damages as set forth in his Verified Complaint (R 1) and his "Motion for Partial Summary Judgment Against Defendant Horkan" (R 4), plus any other relief that may be deemed just and proper by this Court.

Respectfully submitted,

/s/ DENNY C. CORMIER, Pro se
Plaintiff-Appellant

Dated: June 26, 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

DENNY C. CORMIER, Plaintiff,
vs. FRANK D. HORKAN, et al., Defendants.
Civil Action No. : 7:09-CV-68 (HL)

ORDER

Before the Court are Defendants' Motions to Dismiss (Docs. 5, 18, 19, and 29) and Motions to Stay Proceedings (Doc. 6, 21). Also before the Court is Plaintiff Denny Cormier's ("Cormier") Motion for Partial Summary Judgment (Doc. 22) and Motion for Default Judgment (Doc. 24). For the following reasons, Defendants' Motions to Dismiss are granted and Cormier's Motion for Default Judgement is denied. The Motions to Stay Proceedings and the Motion for Partial Summary Judgment are denied as moot.

I. BACKGROUND

On June 2, 2009, Cormier, proceeding pro se, filed his Complaint (Doc. 1) alleging numerous constitutional and statutory violations arising out of his divorce trial. The trial occurred in Colquitt County, Georgia. Defendant Frank D. Horkan, Superior Court Judge for the Southern Judicial Circuit ("Judge Horkan") presided. Cormier alleges that Judge Horkan had a political and working relationship with Dwight May ("Attorney May"), the attorney who represented his ex-wife, Nancy

Cormier, in the divorce case. Cormier claims that because of Judge Horkan and Attorney's May relationship, Judge Horkan made numerous unlawful rulings that violated Cormier's constitutional rights. (Compl. ¶ 31). He also alleges that Judge Horkan had a gender bias that favored women. (Compl. ¶ 29). In his multi-count Complaint Cormier alleges that Defendants:

1. Violated his due process rights under the Fifth Amendment (Count One)
2. Infringed on his Thirteenth Amendment rights (Count Two)
3. Violated his due process, equal protection, and privacy rights under the Fourteenth Amendment (Count Three)
4. Violated 42 U.S.C. §1982 (Count Four)
5. Violated 42 U.S.C. §1983 (Count Five)
6. Violated 42 U.S.C. §1985 (Count Six)
7. Violated 42 U.S.C. §1994 et seq., the federal anti-peonage statutes (Count Seven)
8. Violated the federal and Georgia RICO statutes (Count Eight)
9. Intentionally inflicted emotional distress upon him (Count Nine)
10. Tortiously interfered with his economic advantage (Count Ten) 2 Cormier has brought these ten claims against: (1) Judge Horkan; (2) State of Georgia Governor Sonny Perdue; (3) John B. Alderman, Chairman of Colquitt

County Commissioners, Georgia ("Commissioner Alderman"); (4) Colquitt County of Georgia; (5) Nancy B. Cormier; (6) Ann V. Buechler, Nancy Cormier's mother; (7) Attorney May; and (7) Ann V.

Buechler Trust and Estate. He requests that the Court set aside the final judgment of divorce entered by Judge Horkan and award him punitive and compensatory damages in excess of $1,000,000.00 as well as injunctive and declaratory relief. All Defendants have filed Motions to Dismiss the Complaint. Cormier has responded to Defendants' Motions to Dismiss and has also filed a Motion for Default Judgment and a Motion for Partial Summary Judgment.

II. DISCUSSION

A. Motion for Default Judgment

Cormier contends that he is entitled to a default judgment against Commissioner Alderman and Attorney May because they filed their Motions to Dismiss more than twenty days after they were served with the Complaint. Cormier overlooks the fact that Commissioner Alderman and Attorney May filed timely waivers of service (Docs. 2 and 14). A defendant has sixty days to answer the complaint or file a motion to dismiss if he has timely waived service. Fed. R. Civ. P. 12(a)(1)(A)(ii). Commissioner Alderman and Attorney May filed their Motions to Dismiss on July 30, 2009, four days prior to the sixty day deadline. 3 Because they filed timely Motions to Dismiss, Cormier is not entitled to a default judgment. Accordingly, Cormier's Motion for Default Judgment is denied.

B. Rule 12(b)(6) Dismissal Standards

Pursuant to Federal Rule of Civil Procedure 12(b)(6), the Defendants have filed motions to dismiss Cormier's Complaint for failure to state a claim. When deciding a motion to dismiss, a court accepts

all factual allegations in the complaint as true and construes them in the light most favorable to the plaintiff. Hill v. White, 321 F.3d 1334, 1335 (11th Cir. 2003). Where a plaintiff is also proceeding pro se, a court must "construe [his] complaint more liberally than [it] would formal pleadings drafted by lawyers." Powell v. Lennon, 914 F.2d 1459, 1463 (11th Cir.1990). A complaint must be dismissed where the allegations in the complaint, on their face, show that an affirmative defense exists. Marsh v. Butler County, 268 F.3d 1014, 1022 (11th Cir. 2001). Another basis for dismissal is where a complaint does not "contain either direct or inferential allegations respecting all the material elements [of a claim]." Financial Sec. Assur., Inc. v. Stephens, Inc., 500 F.3d 1276, 1282-83 (11th Cir. 2007) (quotations and citations omitted). Finally, if the factual allegations in the complaint do not "raise a right to relief above the speculative level," then the complaint is also due to be dismissed. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1965 (2007). The plaintiff must do more than use labels and conclusions, and he must include more than a formulaic recitation of the elements of a cause of action. Id. 4 The Court's analysis of whether Cormier's multi-count, multi-defendant Complaint survives Defendants' Motions to Dismiss proceeds as follows: first, the Court discusses the Eleventh Amendment and finds that Judge Horkan and Governor Purdue in their official capacities are immune from Cormier's suit. Then the Court discusses the absolute judicial immunity standard and finds that Judge Horkan in his individual

capacity is entitled to judicial immunity from all of Cormier's claims. Next, the Court reviews each count of the Cormier's Complaint and finds that as to all remaining Defendants, the Complaint fails to state claims upon which relief may be granted. As to Cormier's 42 U.S.C. § 1983 count, the Court discusses separately why the count must be dismissed as to each Defendant. Finally, the Court discusses why equitable relief is not available to Cormier.

C. Claims Against Judge Horkan and Governor Purdue in Their Official Capacities

Cormier has not identified in what capacity he is suing Judge Horkan or Governor Purdue. If he is suing them in their official capacities, then his claims against them are barred by the Eleventh Amendment. Federal suits against state officials in their official capacities for damages are barred by the Eleventh Amendment unless the state has waived its Eleventh Amendment immunity or Congress has overriden it. Scott v. Taylor, 405 F.3d 1251, 1255 (11th Cir. 2005). Congress has not overriden the protections of the Eleventh Amendment for the causes of actions alleged in Cormier's Complaint. Additionally, Georgia has not 5 waived its sovereign immunity for any of Cormier's claims: Georgia's limited waiver of its sovereign immunity found in the Georgia Tort Claims Act applies to state tort actions brought in state courts, not federal courts. Ga. Code Ann. § 50-21-23(b). Cormier asserts that the Eleventh Amendment is not applicable because he asks for injunctive relief pursuant to Ex Parte Young, 209 U.S. 123, 28 S. Ct. 441, 52 L.Ed. 714

(1908). Ex Parte Young established that actions seeking prospective injunctive relief against state actors are not treated as actions against the state. See Kentucky v. Graham, 473 U.S. 159, 167 n.14, 105 S. Ct. 3099 (1985) (explaining that Ex Parte Young found that "official-capacity actions for prospective relief are not treated as actions against the state."). While Cormier is correct that Ex Parte Young created an exception to the Eleventh Amendment rule of immunity, his claim for injunctive relief fails because, as described further below in this Order, he has not sufficiently alleged a material element necessary to obtain an injunction: a violation of any federal or constitutional law. Thus, the Eleventh Amendment bars Cormier's claims against Judge Horkan and Governor Purdue for damages in their official capacities. Cormier's Ex Parte Young claims for injunctive relief against them in their official capacities fails because he has not sufficiently pled a violation of any federal or constitutional law.

D. Claims Against Judge Horkan in His Individual Capacity

Cormier seeks damages from Judge Horkan and asks the Court to enter an injunction against him "to halt further state court orders, to set aside all current state 6 court orders, and to bar [him] from any further statutory or constitutional violations." The Court construes these allegations to mean that Cormier is suing Judge Horkan in his individual capacity. Specifically, Cormier claims Judge Horkan violated constitutional and statutory law during and after the divorce trial because he: (1) Denied

Cormier's Motion for Revision of Alimony at an in camera proceeding on May 25, 2004. (Compl. ¶ 37). (2) Did not allow Nancy Cormier to testify to facts relevant to the claim that she deserted Cormier. (Compl. ¶ ¶ 41, 42). (3) Did not order Nancy Cormier to obtain employment. (Compl. ¶ 42). (4) Did not order Nancy Cormier to produce any documentation regarding her assets or interest in the Ann v. Buechler Trust fund or her payment of an alleged mortgage. (Compl. ¶ 43). (5) Threatened to imprison Cormier if he attempted to remove his case to the federal court. (Compl. ¶ 44). (6) Overruled Cormier's motion for a declaratory judgment. In the motion for declaratory judgment, Cormier asked that Judge Horkan find the Georgia alimony statutes unconstitutional. (Compl. ¶ 45). (7) Found Cormier in contempt for not transferring furniture to Nancy Cormier. (Compl. ¶ 46). (8) Ordered Cormier incarcerated if he did not pay attorney's fees. (Compl. ¶ 47). (9) Failed to disclose to Cormier that he had named Attorney May his reelection treasurer and campaign manager. (Compl. ¶ 51). (10) Ordered Cormier to pay attorney's fees (Compl. ¶ 53).

(11) Proceeded to "rush to judgment" while Cormier's removed federal case was pending and conspired with Attorney May to proceed to trial and to schedule a final judgment. (Compl. ¶ ¶ 52, 56). (12) Conspired to make state court awards with Attorney May to the detriment of Cormier. (Compl. ¶ 54).

(13) Failed to review or rule on Cormier's Writ of Mandamus. (Compl. ¶ 55).

(14) Failed to recuse himself from Cormier's case. (Compl. ¶ 58). (15) Entered a final judgment of

divorce on August 1, 2005, while Cormier's removed case was pending. According to Cormier, the final judgment forced Cormier into a perpetual alimony-peonage contract and he was unlawfully ordered to assume all debts of the marriage. (Compl. ¶ ¶ 61, 62, 63, 64). (16) Entered the final divorce judgment on August 1, 2005 even though Cormier was not present. (Compl. ¶ 65). (17) Denied Cormier's motion for a re-hearing of final decree on August 9, 2005. (Compl. ¶ 66). (18) Failed to disclose to Cormier that he had a political and working relationship with Attorney May. (Compl ¶ 20, 51). 8 (19) Domesticated the Georgia final divorce judgment in Virginia (Compl. ¶ 70). Cormier's suit against Judge Horkan in his individual capacity for damages and injunctive relief is barred by judicial immunity.

1. Judicial Immunity from Claim for Damages

It is well settled that a judge is afforded absolute judicial immunity from damages so long as: (1) his actions were not taken in the complete absence of jurisdiction; and (2) his actions were taken in the course of his judicial capacity. Bolin v. Story, 225 F.3d 1234, 1239 (11th Cir. 2000) (citation omitted). "This immunity applies even when the judge's acts are in error, malicious, or were in excess of his or her jurisdiction." Id. A judge acts in the clear absence of jurisdiction when, for example, he has jurisdiction over only wills and estates, but he tries a criminal case. Stump v. Sparkman, 425 U.S. 349, 356 n. 7, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978). Whether a judge acts in his judicial capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's

chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity. Sibley v. Lando, 437 F.3d 1067, 1071 (11th Cir. 2005) (citing Scott v. Hayes, 719 F.2d 1562, 1565 (11th Cir.1983). All of Cormier's allegations against Judge Horkan relate to Judge Horkan's actions during Cormier's divorce trial. For these actions, Judge Horkan acted within his jurisdiction and in his judicial capacity. First, as to whether Judge Horkan acted with jurisdiction, the Georgia Constitution grants superior court judges exclusive jurisdiction over divorce cases. Ga. Const. art. VI, § IV, Para. I. Further, Cormier has not argued or alleged in his Complaint that venue was improper in the Southern Judicial Circuit. Thus, Judge Horkan acted within his jurisdictional scope when he presided over Cormier's divorce trial. In addition, three factors support a finding that Judge Horkan acted in his judicial capacity. Regarding the first factor, entering court orders, holding hearings, and making rulings regarding payment of attorneys fees, the scope of testimony, and whether to enter a contempt order are all judicial functions. Likewise, a judge's decision not to recuse himself is a judicial function. See Shapiro v. Ingram, 207 Fed. App'x. 938, 940 (11th Cir. Oct. 25, 2006) (unpublished) (stating that one of state court judge's functions was whether or not to recuse herself from the case). As to the second factor, any action that Judge Horkan took in relation to this case occurred in open court. Third, Cormier's allegations center around the divorce case pending before Judge Horkan. Viewing these facts in

their totality, the Court finds that Judge Horkan's alleged wrongful actions were taken in the course of his judicial capacity. Because Judge Horkan was acting with jurisdiction and in his judicial capacity when he took the actions complained of in Cormier's Complaint, the Court finds Judge Horkan is entitled to judicial immunity from damages.

2. Judicial Immunity from Claim for Injunctive Relief

A state court judge is not immune for claims for prospective injunctive relief. Pulliam v. Allen, 466 U.S. 522, 541-42, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984). However, "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. §1983. If a plaintiff does not allege either, then his complaint must be dismissed. Judge Horkan is entitled to immunity from Cormier's claim for injunctive relief because Cormier did not sufficiently allege that Judge Horkan violated a declaratory decree or that declaratory relief was available. The pleadings neither allege nor provide grounds to suggest that Judge Horkan violated a declaratory decree. Cormier does contend, however, that declaratory relief was unavailable because the Supreme Court of Georgia declined to review his application for appeal. (Compl. ¶ 49). Despite his contention that declaratory relief was unavailable, he has asked the Court to enter a declaratory judgment against all Defendants. Cormier does not specify what he wishes the contents of the

declaratory judgment to be, but regardless, asking this Court to enter a declaratory judgment contradicts his assertion that declaratory relief was unavailable to him. See, e.g., LeClerc v. Webb, 2003 WL 21026709, *4 (E.D. La. May 2, 2003) (finding that plaintiffs failed to plead declaratory relief was unavailable when plaintiffs sought declaratory relief in the district court). In addition, he asserts 11 in his Complaint that while his divorce case was pending he sought declaratory and mandamus relief from federal courts as well as state courts. (Compl. ¶¶ 36, 40). His seeking declaratory relief in federal and state court prior to filing this Complaint further undercuts his assertion that declaratory relief was unavailable. The Court finds that Cormier has insufficiently alleged the unavailability of declaratory relief. As a result, his claim for injunctive relief is barred. See Monetero v. Travis, 171 F.3d 757, 761 (2d Cir. 1999) (explaining that failure to allege that declaratory relief was unavailable is fatal to a plaintiff's complaint for injunctive relief against a judge). Because Judge Horkan is immune in his individual capacity against Cormier's claims for damages and equitable relief, Cormier's entire Complaint against Judge Horkan in his individual capacity is dismissed. The Court next determines whether Cormier's Complaint against the remaining Defendants should be dismissed.

E. Count One - Violations of the Fifth Amendment

Count One of Cormier's Complaint alleges Defendants violated his Fifth Amendment due process rights by obstructing efforts to obtain

evidence, preventing key evidence to be entered and heard, and by taking his liberty and property. The Fifth Amendment applies only to conduct of federal officials and federal governmental entities. See Porter v. White, 483 F.3d 1294, 1297 n. 1 (11th Cir. 2007) (explaining that plaintiff erroneously invoked the Fifth Amendment when his claims were against a non-federal government official and a non-federal governmental entity). Cormier's Complaint contains no allegations that federal officials or a federal entity were involved in Cormier's injuries; thus, the Fifth Amendment provides no basis for relief in this case. The Fourteenth Amendment incorporates the Fifth Amendment's constitutional protections to the states. Cormier's contentions that Defendants violated his due process rights is discussed in the 42 U.S.C. §1983 section of this Order because §1983 provides a cause of action for plaintiffs alleging Fourteenth Amendment violations by state actors. Therefore, Count One is dismissed as to all remaining Defendants because Cormier does not have a cause of action against Defendants under the Fifth Amendment.

F. Count Two - Violation of the Thirteenth Amendment

Cormier alleges that all the Defendants violated the Thirteenth Amendment by conspiring to coerce and force him into perpetual bankruptcy, involuntary servitude, and peonage for the collection of unlawful debts. The unlawful debts he refers to are his alimony obligations imposed on him as part of Judge Horkan's final divorce decree. The Thirteenth Amendment provides that "[n]either slavery nor

involuntary servitude, except as a punishment for crime . . ., shall exist within the United States . . . ." U.S. Const. amend XIII, § 1. The purpose of the Thirteenth Amendment "was to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War . . . ." United States v. Kozminski, 487 U.S. 931, 942, 108 S. Ct. 2751,101 L. Ed. 2d 788 (1988). Involuntary servitude exists when the "victim 13 had no available choice but to work or be subject to legal sanction." Id. at 943. In deciding whether Cormier has stated a claim under the Thirteenth Amendment, the Court is guided by an unpublished decision of the Eleventh Circuit. In Greenberg v. Zingale, the court held that "alimony is not the type of subject matter the Thirteenth Amendment was designed to address." Greenberg v. Zingale, 138 Fed. App'x. 197, 200 (11th Cir. June 20, 2005) (unpublished). In that case, the court reviewed the Florida alimony provisions and found that they did not permit the use of physical or legal coercion to force people into involuntary servitude. Id. Although consequences for failing to pay alimony included being held in contempt of court, the court determined that the potential consequences did not amount to involuntary servitude. Id. Likewise, Georgia's alimony statutes limit the Court's power to enforce alimony orders to "the same extent as is provided by law for contempt of the court in any other action or proceeding cognizable by the court." Ga. Code Ann. § 19-6-28(a). There is no indication that they allow the use of physical or legal coercion to compel people to work. Thus, Cormier's claim that his alimony obligations

constituted involuntary servitude fails to state a cause of action under the Thirteenth Amendment.[30] The Court accordingly dismisses Count Two against all remaining Defendants.1 The Court's conclusion is the same if the Complaint is construed to allege an as-applied challenge to the Georgia's alimony statutes. The Rooker-Feldman doctrine bars this as-applied constitutional challenge. Greenberg, 138 Fed. App'x. at 200.14

G. Count Three - Violations of the Fourteenth Amendment

Cormier alleges that Defendants violated his due process, equal protection, and privacy rights under the Fourteenth Amendment. Specifically, he alleges that Defendants deprived him of equal protection because they had a gender bias against him. The Fourteenth Amendment, by itself, does not create a cause of action. Hughes v. Bedsole, 48 F.3d 1376, 1383 n. 6 (4th Cir. 1995). Violations of the Fourteenth Amendment are, however, actionable under 42 U.S.C. §1983. Collins v. City of Harker Heights, Tex., 503 U.S. 115, 119-20, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992) ("The First Amendment, the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and other provisions of the Federal Constitution afford protection to employees who serve the government as well as to those who are served by them, and § 1983 provides a cause of action for all citizens injured by an abridgment of

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[30] The Court's conclusion is the same if the Complaint is construed to allege an as-applied challenge to the Georgia's alimony statutes. The Rooker-Feldman doctrine bars this as-applied constitutional challenge. Greenberg, 138 Fed. App'x. at 200.

those protections."). In addition, there are some statutes enacted by Congress pursuant to Section Five of the Fourteenth Amendment that create causes of action for Fourteenth Amendment violations. See, e.g., City of Boerne v. Flores, 521 U.S. 507, 536, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997) (invalidating the Religious Freedom Restoration Act of 1993, a statute passed by Congress pursuant to its remedial powers under Section Five of the Fourteenth Amendment). Cormier has brought a §1983 claim. He has not alleged a violation of a statute enacted under Section Five. Therefore, later in this Order the Court discusses Cormier's Fourteenth Amendment violations in the context of his §1983 claim. Otherwise Count Three is dismissed as to all Defendants for failure to state a claim because Cormier does not have a cause of action solely based on the Fourteenth Amendment.

H. Count Four - Violation of 42 U.S.C. §1982

Cormier alleges that Defendants violated 42 U.S.C. §1982 because they deprived him of his property rights and any future rights of conveyance. Section 1982 provides that "(a)ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C. § 1982. The Supreme Court has held that §1982 "deals only with racial discrimination and does not address itself to discrimination on grounds of religion or national origin." Jones v. Alfred H. Mayer Co., 392 U.S. 409, 413, 88 S. Ct. 2186, 20 L. Ed. 2d 1189 (1968).

Nowhere in his Complaint does Cormier allege that Defendants discriminated against him on the basis of his race. Therefore, based on the facts presented in the Complaint, this statute does not afford him a cause of action. Count Four is dismissed against all remaining Defendants.

I. Count Five - Violation of 42 U.S.C. §1983

Cormier alleges in his Complaint that Defendants violated 42 U.S.C. § 1983 by depriving him of certain constitutional rights including his rights to a fair trial, due 16 process, equal protection, and privacy. For a complaint to survive a motion to dismiss a § 1983 claim, the plaintiff must allege conduct taken by a person acting under the color of state law. Griffen v. City of Opa-Locka, 261 F.3d 1295, 1303 (11th Cir. 2001). Then the plaintiff must overcome the defense of qualified immunity by showing: first, that the facts viewed in the light most favorable to him establish a constitutional violation by the official; and, second, that the unlawfulness of the official's conduct was clearly established at the time of the incident. McCullough v. Antolini, 559 F.3d 1201, 1205 (11th Cir. 2009). In the complaint, a plaintiff is required to allege facts that would defeat the claim of qualified immunity with "some specificity." GJR Invs. Inc. v. County of Escambia, Fla., 132 F.3d 1359, 1367 (11th Cir.1998). The Court dismisses the §1983 claim against all Defendants because Cormier has not shown that the state and local actors committed a constitutional violation and that the private actors acted under color of state law.

1. Governor Purdue

In support of his claim that Governor Purdue is liable under 42 U.S.C.§ 1983, Cormier states that Governor Purdue is responsible for the actions taken by state judges and "other public officials presiding in more than one county." In response, Governor Purdue asserts that the §1983 claim should be dismissed because Cormier has failed to state in the Complaint that Governor Purdue committed a constitutional violation. As an initial matter, by operation of separation of powers, Governor Purdue does not supervise the state judiciary. Cormier's allegation that Governor Purdue "is responsible for actions taken by state judges," as a matter of law, is incorrect, but even if Governor Purdue supervised the state judiciary or had some authority over the state judiciary, Cormier's §1983 claim against Governor Purdue must be dismissed for failure to state a claim. A supervisory official does not commit a constitutional violation solely on the basis of respondeat superior or vicarious liability. Danley v. Allen, 540 F.3d 1298, 1314 (11th Cir. 2008). Instead, supervisory liability occurs when the supervisor personally participates in the alleged constitutional violation or when the plaintiff establishes "a history of widespread abuse [which] puts the responsible supervisor on notice of the need to correct the alleged deprivation, and he fail[ed] to do so." Id. (quotations and citation omitted). Alternatively, liability may be established when a supervisor's "custom or policy ... result[s] in deliberate indifference to constitutional rights" or when facts support "an inference that the supervisor directed the subordinates to act unlawfully or knew that the subordinates would act

unlawfully and failed to stop them from doing so." Cottone v. Jenne, 326 F.3d 1352, 1360 (11th Cir. 2003) (citations and quotations omitted). Cormier does not allege in his Complaint that Governor Purdue personally directed Judge Horkan to act unlawfully and it does not allege that Governor Purdue personally participated in his divorce case. Cormier also does not contend that there 18 was a widespread abuse of the state judicial system, and he does not contend that a policy or custom of Governor Purdue's violated his rights. Because of these failings, Cormier's Complaint insufficiently alleges that Governor Purdue committed a constitutional violation. Accordingly, the Court grants Governor Purdue's Motion to Dismiss the §1983 claim.

2. Commissioner Alderman

Cormier alleges that Commissioner Alderman is liable under §1983 because he represents Colquitt County and is the responsible party for providing judicial services to Judge Horkan. In response, Commissioner Alderman contends that it is an unwarranted deduction of fact that Commissioner Alderman supervised Judge Horkan and regardless, that he is immune from suit in his individual capacity under the Speech and Debate Clause of the United States Constitution. First, the Court finds that even if Commissioner Alderman was a supervisor to Judge Horkan, Cormier's Complaint does not adequately allege grounds for supervisory liability under §1983. He does not allege that Commissioner Alderman directed Judge Horkan to act unlawfully. There is no allegation that Commissioner Alderman participated in the divorce

proceedings and there is no allegation that there was any widespread abuse in the superior court of which Commissioner Alderman should have known. Moreover, there is no allegation, aside from his assertion that Commissioner Alderman provided judicial services, that he maintained a policy that was indifferent to constitutional rights.19 Second, Commissioner Alderman is entitled to immunity from Cormier's claim to the extent that it alleges that Commissioner Alderman is directly liable for providing judicial services to Judge Horkan. Cormier does not explain in his Complaint what constitutes "judicial services," but the Court believes that Cormier is referring to Commissioner Alderman's authority to provide financial support to Colquitt Superior Court. Local legislators are entitled to legislative immunity for their budgetary decisions for funding the county. Woods v. Gamel, 132 F.3d 1417, 1420 (11th Cir. 1998). Because any direct liability claim against Commissioner Alderman is barred by legislative immunity, Cormier's § 1983 claim against Commissioner Alderman is dismissed.

3. Colquitt County

Cormier alleges that Colquitt County is liable under §1983 because it "provided essential judicial services for Defendant Horkan" and "furnished the Defendants with law enforcement and imprisonment facilities." Cormier's §1983 claim against Colquitt County is dismissed. To state a § 1983 claim against a municipality, the plaintiff must allege that the constitutional deprivation was pursuant to an official governmental policy or custom. Monell v. Dep't of Soc. Servs. of the City of New York, 436 U.S. 658,

690-91, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). Once a policy or custom is alleged, then the plaintiff must then allege that the policy or custom caused the constitutional violation. McDowell v. Brown, 392 F.3d 1283, 1289 (11th Cir. 2004). He must allege that the 20 policy or custom was "highly likely to inflict the particular injury." Id. (quoting Bd. of County Com'rs of Bryan County, Okl. v. Brown, 520 U.S. 397, 411, 117 S. Ct. 1382, 137 L.Ed.2d 626 (1997)). Cormier's Complaint does not contain sufficient facts that show Colquitt County's budgetary decisions and decision to provide law enforcement and imprisonment facilities caused any constitutional violations. All Cormier has alleged is that Colquitt County provided judicial services and law enforcement and imprisonment facilities. The mere existence of these practices does not establish that they are unconstitutional. He has not shown that the County's decisions were "highly likely" to cause him injury. The §1983 claim against Colquitt County is dismissed.

5. Private Actors - Attorney May, Nancy Cormier, Ann Buechler, Ann V. Buechler Trust and Estate

The Supreme Court has stated that "the under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful." American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50, 119 S.Ct. 977, 143 L. Ed. 2d 130 (1999) (citations and quotations omitted). Cormier has made conclusory allegations that the private actor Defendants acted under color of state law. As a result, his § 1983 claim

against them must be dismissed. If a private citizen conspires with a state actor, then the private citizen acts under color of state law and is subject to §1983 liability. Rowe v. City of Fort Lauderdale, 279 F.3d 1271, 1285 (11th Cir. 2002) (citation omitted). The plaintiff attempting to prove such a conspiracy must show that the parties "reached an understanding" to deny the plaintiff his or her rights. N.A.A.C.P. v. Hunt, 891 F.2d 1555, 1563 (11th Cir. 1990) (citation omitted). In conspiracy actions, more than mere conclusory notice pleading is required. It is insufficient to simply allege that a conspiracy existed. Fullman v. Graddick, 739 F.2d 553, 557 (11th Cir. 1984). Cormier's Complaint makes allegations that all Defendants conspired to deprive him of his constitutional rights. The Court addresses the conspiracy allegations against each private actor Defendant separately. Cormier's allegations against Nancy Cormier assert that she conspired to violate his civil rights. There are no facts in the Complaint showing that she reached an understanding with Judge Horkan or with the other Defendants to deprive Cormier of his constitutional rights. Because Cormier has only made a conclusory conspiracy allegation against Nancy Cormier, he has insufficiently alleged the existence of a conspiracy and the §1983 claim against Nancy Cormier is dismissed. Likewise, Cormier's §1983 against Ann Buechler must also be dismissed because the only references to her engaging in a conspiracy are found in the title of count five, which asserts a §1983 claim against all the Defendants, and in count six, in which he alleges that Defendants conspired to deprive him

of his constitutional rights. Because Cormier has not alleged that Ann Buechler entered into an agreement to conspire with any Defendant, and because he has not stated any facts sufficient to support the existence of an agreement, he has insufficiently alleged a conspiracy. His §1983 claim against Ann Buechler is dismissed. Cormier's allegation against the Ann V. Buechler Trust and Estate is based on Nancy Cormier's alleged interest in the trust fund. According to Cormier, Judge Horkan did not compel Nancy Cormier to produce documentation regarding her interest in the trust fund. Cormier does not allege that a representative acting on behalf of the trust entered into an agreement to violate Cormier's constitutional rights and the Court cannot find any facts in the Complaint supporting the existence of an agreement. Because of these deficiencies, the § 1983 claim against Ann V. Buechler Trust and Estate is dismissed. As for Cormier's conspiracy claim against Attorney May, it alleges that Attorney May engaged in quid pro quo activities with Judge Horkan depriving Cormier of his rights to due process and equal protection. The claim also alleges that Judge Horkan and Attorney May conspired to award Attorney May attorney's fees. Throughout his Complaint Cormier states that Judge Horkan made judicial rulings with the ex parte assistance of Attorney May. The facts in the Complaint supporting the existence of the conspiracy between Attorney May and Judge Horkan are that Attorney May was the treasurer and campaign manager for Judge Horkan, that Judge Horkan and Attorney May were business and law partners, and that neither

Attorney May nor Judge Horkan disclosed their relationship to Cormier. Viewing these facts in the light most favorable to Cormier, it is apparent from the Complaint that Judge Horkan and Attorney May had a working and political relationship where Judge Horkan benefited from Attorney May's services as a treasurer and campaign manager. The Court finds a case with similar facts decided by the district court for the District of Massachusetts persuasive in deciding whether Cormier has sufficiently stated a claim of conspiracy against Attorney May. In Hamilton v. Arnold, 135 F. Supp. 2d 99, 103 (D. Mass. 2001), the court found that there was evidence that a judge and an attorney were close personal friends, who at times improperly flaunted their relationship, and may have engaged in inappropriate behavior during the plaintiff's divorce trial. Nevertheless, the evidence was not circumstantial evidence of an agreement to conspire to deprive the plaintiff of his constitutional rights. Following the reasoning in Hamilton v. Arnold, this Court finds that Judge Cormier and Attorney May's relationship is a fact that does not support the inference that there was an express or implicit agreement between them to deprive Cormier of his constitutional rights. Without facts showing the existence of an agreement, the allegation that Attorney May entered into a conspiracy is mere speculation. Thus, because Cormier has insufficiently pled facts to support the existence of a conspiracy between Attorney May and Judge Horkan, Cormier's §1983 claim against Attorney May is dismissed.

J. Count Six - Violation of 42 U.S.C. § 1985

Cormier contends that Defendants conspired to deprive him of his constitutional rights in violation of 42 U.S.C. § 1985. The elements of a cause of action under the conspiracy section of § 1985, are: (1) a conspiracy; (2) that exists for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws; (3) an act taken in furtherance of the conspiracy, (4) and a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States. Trawinski v. United Techs., 313 F.3d 1295, 1299 (11th Cir. 2002) (quotations and citation omitted). A plaintiff must also show that the defendants were motivated by racial or class-based discriminatory animus. Griffin v. Breckenridge, 403 U.S. 88, 102, 91 S. Ct. 1790 (1971). As already explained by the Court, Cormier has failed to allege sufficient factual allegations showing the existence of a conspiracy between Defendants. For that reason, his §1985 claim is dismissed. Another basis for dismissal is that he has not alleged that Defendants were motivated by a racial or class-based motive. His allegation that he was discriminated on the basis of sex was limited to Judge Horkan and he did not allege that the other Defendants were motivated by an impermissible sex bias. Thus, for either of these reasons, Count Six is dismissed.

K. Count Seven - Violation of 42 U.S.C. §1994 et seq.

The Anti-Peonage Act, 42 U.S.C. § 1994 et seq., implements the Thirteenth Amendment. Davis v. Hudson, 2006 WL 1089510, *3 (10th Cir. Aug. 4,

2000) (citation omitted). Because Cormier's Complaint fails to state a cause of action under the Thirteenth Amendment, it likewise fails to state a cause of action under 42 U.S.C. § 1994. Count Seven is dismissed as to all Defendants.

L. Violations of Federal and Georgia RICO Statutes

Cormier alleges that Defendants violated the federal and Georgia RICO statutes "through oppressive misuse of the Georgia alimony statutes and for collection of unlawful debts." He claims that Defendants' conduct "has an extortionate quality that gives it the rancid flavor of unfairness." A civil claim under the federal RICO Act requires proof of four elements: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Langford v. Rite Aid of Alabama, Inc., 231 F.3d 1308, 1311 (11th Cir.2000). Racketeering activity is defined as including any act enumerated within18 U.S.C. §1961(1). Id. at 1312 (citation omitted). The imposition of alimony does not fall within the many acts that constitute racketeering activity under §1961(1). Therefore, Cormier's federal RICO Act claim is dismissed for failure to state a claim. Under the Georgia RICO statute, "[i]t is unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money." Ga. Code Ann. §16-14-4(a). The phrase racketeering activity is defined as including any act identified in Ga. Code Ann. § 16-14-3(9)(A). 26 Likewise, Cormier has failed to allege

a predicate act that constitutes racketeering activity under the Georgia RICO statute. Thus, his Georgia RICO claim fails to state a cause of action and Count Eight is dismissed as to all defendants.

M. Count Nine - Intentional Infliction of Emotional Distress

Cormier contends that Defendants have intentionally inflicted emotional distress on him because they intentionally violated his constitutional rights. He states that as a result of their actions, his children have become alienated from him, and he has suffered severe emotional distress. Under Georgia law, to state a claim for intentional infliction of emotional distress, a plaintiff must demonstrate that "(a) the conduct giving rise to the claim was intentional or reckless, (b) the conduct was extreme and outrageous, (c) the conduct caused the emotional distress, and (d) the emotional distress was severe." Ashman v. Marshall's of MA, Inc., 535 S.E.2d 265, 267 (Ga. Ct. App. 2000). The Court finds that Cormier's Complaint alleges no outrageous conduct on the part of Defendants. The possible outrageous conduct found in the Complaint is the alleged conspiracy that existed between Defendants, but as the Court has already found, Cormier has failed to state a claim that Defendants conspired against him. Because his allegations regarding a conspiracy fail, the Court likewise finds that Cormier has insufficiently pled the existence of outrageous conduct. As a result, his claim for intentional infliction of emotional distress is dismissed as to all Defendants.

N. Count Ten - Tortious Interference with Business Relations

Cormier's last claim alleges that Defendants interfered with his business relations because they in an arbitrary and capricious manner and with malicious intent, interfered with his economic advantage causing him irreparable financial harm. He also alleges that they breached their fiduciary duties as public officials causing him harm. To recover under a theory of tortious interference with business relations (economic advantage), a plaintiff must show the defendant: (1) acted improperly and without privilege, (2) acted purposely and with malice with the intent to injure, (3) induced a *third party or parties* not to enter into or continue a business relationship with the plaintiff, and (4) caused plaintiff financial injury. Renden, Inc. v. Liberty Real Estate Ltd. P'ship III, 444 S.E.2d 814, 817 (Ga. App.1994) (emphasis in original). Cormier's Complaint fails to allege that he had a business relationship with which the Defendants interfered. Although he states in his Complaint that he is a physician, there is no allegation that he practices medicine, or if he does, that his practice of medicine has suffered as a result of Defendants' actions. The Court must accordingly dismiss Count Ten against all Defendants for failure to state a claim.

O. Requests for Injunctive and Declaratory Relief

Cormier's requests for injunctive and declaratory relief should also be dismissed as to all Defendants. Cormier asks the Court to: (1) enjoin Defendants from any further statutory or constitutional

violations; (2) order injunctive relief and declaratory judgment; and (3) order that the final divorce judgment be set aside. To receive declaratory or injunctive relief, a plaintiff must establish that there was a violation, that there is a serious risk of continuing irreparable injury if the relief is not granted, and that there is an inadequate remedy at law. Bolin, 225 F.3d at 1242. The first factor requires that a plaintiff articulate a basis for relief that would withstand dismissal under Federal Rule 12(b)(6). Klay v. United Healthgroup, Inc., 376 F.3d 1092, 1097-98 (11th Cir. 2004). The Court finds that all of Cormier's allegations in his Complaint fail to state a claim upon which relief may be granted and must be dismissed. As a result, Cormier has not satisfied the first factor necessary to obtain injunctive or declaratory relief. The Court dismisses his requests for injunctive or declaratory relief.

III. CONCLUSION

For the explained reasons, Cormier's Complaint is dismissed as to all Defendants. The Motion for Default Judgment is denied. The Motions to Stay Proceedings and for Partial Summary Judgment are denied as moot.

SO ORDERED, this the 11 day th of February, 2010.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE
lmc

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

DENNY C. CORMIER, Plaintiff,
vs. FRANK D. HORKAN, et al., Defendants.
Civil Action No. : 7:09-CV-68 (HL)

JUDGMENT

Pursuant to this Court's Order dated February 11, 2010, and for the reasons stated therein, JUDGMENT is hereby entered in favor of Defendants. Plaintiff shall recover nothing of Defendants. Defendants shall also recover costs of this action.

This 12th day of February, 2010.
Gregory J. Leonard, Clerk
s/ Robin L. Walsh
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

DENNY C. CORMIER, Plaintiff,
vs. FRANK D. HORKAN, et al., Defendants.
Civil Action No. : 7:09-CV-68 (HL)

COMPLAINT

INTRODUCTION

COMES NOW, Plaintiff, DENNY C. CORMIER, who hereby brings this complaint and suit in equity for deprivation of his rights, privileges, and immunities secured by the Constitution and laws of the United States, against the Defendants, FRANK D. HORKAN, Superior Court Judge, DWIGHT MAY, attorney, NANCY CORMIER, former spouse, ANN V. BUECHLER, mother of former spouse, GEORGE ERVIN "SONNY" PERDUE III, Governor of the State of Georgia, COLQUITT COUNTY, GEORGIA and JOHN B. ALDERMAN, Chairman of Colquitt County Commissioners, Georgia. Moreover, this complaint alleges that Defendants conspired to impermissibly infringe upon the United States Constitution, Amendments V, XIII and XIV, and violate 42 U.S.C.

§§ 1982, 1983, and 1985, acting as possessed by virtue of state law, made possible only because the Defendants were clothed with the authority of state law resulting in impermissible infringements of the Due Process, Equal Protection and Privacy provisions of Amendments V and XIV. Moreover, this complaint alleges impermissible infringements of Amendment XIII by Defendants as well as violations of Federal Anti-Peonage statutes, 42 U.S.C. §§ 1994 et seq, through intentional forced labor and peonage of Plaintiff by Defendants, under color of law, and under threats of oppressive false imprisonment causing perpetual bankruptcy of Plaintiff. Furthermore, Plaintiff alleges violations by Defendants of Federal RICO statutes, 18 U.S.C. §§ 1951-1968 inter alia, by actively conspiring to commit extortion and fraud against Plaintiff, under color of law, during a Federal removal, in violation of 28 U.S.C. § 1446, and through corrupt *ultra vires* conduct by collection of unlawful debts through alimony-peonage contracts, with intentional infliction of emotional distress, thereby causing irreparable financial harm to Plaintiff.

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the instant case in accordance with 42 U.S.C. § 1983, and pursuant to 28 U.S.C. § 1343(a)(3) due to civil rights violations and impermissible infringements of 5th, 13th and 14th Amendments to the United States Constitution wherein the

amount Plaintiff claims as damages suffered exceed $75,000.

2. Subject matter jurisdiction is predicated upon 28 U.S.C § 1331 as parties are disputing Federal constitutional and statutory issues.
3. Federal diversity jurisdiction exists pursuant to 28 U.S.C. § 1332 because the Plaintiff and some Defendants are residents of states other than Georgia, and because the value of the matter in controversy exceeds $75,000.
4. Plaintiff has asserted a Jennings-England reservation in all state pleadings involving Federal and constitutional issues to maintain his standing within the Federal Court system, and therefore this Court has jurisdiction to review Federal claims taken in the state court pursuant to England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964); Fields v. Sarasota Manatee Airport Authority, 953 F.2d 1299, 1303 (11th Cir. 1992) citing Jennings v. Caddo Parish School Bd., 531 F.2d 1331 (5th Cir.1976), 429 U.S. 897 , 97 S.Ct. 260, 50 L.Ed.2d 180 (1976).
5. This action seeks declaratory relief, and as such this Court has jurisdiction under 28 U.S.C. § 2201(a) and 28 U.S.C. § 2202.
6. This action seeks injunctive relief, and as such this Court has jurisdiction under 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1343(a)(4).
7. This action is founded upon the Constitution of the United States of America, and as such, this Court has jurisdiction over Defendants under 28 U.S.C. § 1346(a)(2).

8. Eleventh Amendment immunity for state officials is inapplicable and this Court has jurisdiction in the instant case under Ex parte Young, 209 U.S. 123 (1908), because Defendants acted *ultra vires* and because the State of Georgia acted unconstitutionally when the Georgia Supreme Court erroneously declared on June 26, 2006 that state judges are permitted to violate Federal law.
9. The Rooker-Feldman abstention is inapplicable because both the Georgia Superior Court and the Georgia Supreme Court refused to hear or rule on the constitutional issues and instead dismissed them without reasoned opinion or a full and fair hearing, nor did any Georgia state court address violations of Federal statutory law, making declaratory relief unavailable, and because the Federal Anti-Peonage Statutes 42 U.S.C. § 1994 et seq and Federal RICO statutes have never been reviewed by any state or Federal court; therefore this Court has jurisdiction to review the merits of the instant case: Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), and Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 125 S. Ct. 1517, 1527 (2005).
10. Common-law principles of *collateral estoppel* and *res judicata* are inapplicable because declaratory relief was unavailable to Defendant at the state level due to denials and dismissals without reasoned opinion in both the Superior Court of Colquitt County, Georgia, and the

Georgia Supreme Court, nor was Plaintiff ever given a full and fair hearing on the merits of his previous cases in the Federal Court, nor were issues, merits and causes of actions alleged in the instant case reviewed concerning *ultra vires* conduct of Defendants nor regarding Federal Anti-Peonage statutory violations, fraud and extortion Federal RICO violations, nor were impermissible infringements of 13th and 14th Amendments and Federal statutory law ever heard, addressed or reviewed in any previous State or Federal lawsuits by Plaintiff; instead all cases have been dismissed or remanded without a full and fair hearing or reasoned opinion solely based upon abstentions or jurisdictional grounds, relating to comity and ongoing state cases, and therefore this Court has jurisdiction to review merits of said instant case.

11. Venue is proper in this Federal District of Georgia under 28 U.S.C. § 1391, as a substantial part of the actions, events giving rise to this claim occurred in Georgia and involves violations of Georgia statutory law plus impermissible infringements of 5th, 13th and 14th Amendment provisions of the U.S. Constitution as well as the Georgia Constitution arising under the Art. I Sec. I Paragraphs XXII and XXIII.
12. This Court has jurisdiction over this claim pursuant to its supplemental jurisdiction, 28 U.S.C. § 1367(a).

13. This court has additional jurisdiction for the instant case pursuant to the following case law where courts have found that state judges who acted outside of their judicial capacity were not entitled to immunity: Forrester v. White, 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988)(state court judge did not have absolute immunity from damages suit under S 1983 for his decision to demote and dismiss a probation officer); Morrison v. Lipscomb, 877 F.2d 463 (6th Cir.1989)(state court judge was not entitled to judicial immunity in connection with order declaring moratorium on issuance of writs of restitution from December 15 through January 2, as judge was acting in administrative and not judicial capacity).
14. Moreover, this Court has supplemental jurisdiction in cases involving state judges acting outside their judicial capacity derives from King v. Love, 766 F.2d 962, 968 (6th Cir.), cert. denied, 474 U.S. 971, 106 S.Ct. 351, 88 L.Ed.2d 320 (1985)(although setting bond on an arrest warrant is a judicial act, the act of deliberately misleading the police officer who was to execute the warrant about the identity of the person sought was nonjudicial); Sevier v. Turner, 742 F.2d 262 (6th Cir.1984)(juvenile court judge's initiation of criminal prosecution and civil contempt proceeding against father for child support in arrears constituted nonjudicial acts); New Alaska Development Corporation v. Guetschow, 869 F.2d 1298 (9th Cir.1988)(receiver appointed by state court to

manage business assets of an estate was entitled to absolute derivative judicial immunity, but receiver was not absolutely immune from allegations that he stole assets or slandered parties, as such alleged acts were not judicial); Harper v. Merckle, 638 F.2d 848 (5th Cir.), cert. denied, 454 U.S. 816, 102 S.Ct. 93, 70 L.Ed.2d 85 (1981)(holding a contempt proceeding and ordering plaintiff incarcerated were not judicial acts where controversy that led to incarceration did not center around any matter pending before the judge, but around domestic problems of plaintiff former wife who worked at the courthouse); Harris v. Harvey, 605 F.2d 330 (7th Cir.1979), cert. denied, 445 U.S. 938, 100 S.Ct. 1331, 63 L.Ed.2d 772 (1980)(allegedly repeated communications to the press and city officials which were critical of police lieutenant, and the improper instigation of criminal proceedings against the lieutenant by judge as part of a racial campaign to discredit lieutenant were not judicial acts).

15. This Court has additional authority and jurisdiction to review constitutional issues relating to the instant case, especially when it involves Equal Protection infringements and discrimination based upon gender in accordance with U.S. Supreme Court decisions in Orr v. Orr, 440 U.S. 268 (1979), Stanton v. Stanton, 429 U.S. 501 (1977), and Roe v. Wade, 410 U.S. 113 (1973), as well as findings in the following case law cited by the U.S Supreme

Court: United Air Lines, Inc. v. Mahin, 410 U.S. 623, 630 -631 (1973); Poafpybitty v. Skelly Oil Co., 390 U.S. 365, 375 -376 (1968); Steele v. Louisville & Nashville R. Co., 323 U.S. 192, 197 n. 1 (1944); International Steel & Iron Co. v. National Surety Co., 297 U.S. 657, 666 (1936); Grayson v. Harris, 267 U.S. 352, 358 (1925); Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 120 (1924); Rogers v. Hennepin County, 240 U.S. 184, 188 -189 (1916).

PARTIES AND FACTUAL STATEMENTS

16. Plaintiff, DENNY C. CORMIER, is a physician and resident of Newport News, Virginia.
17. Defendant, NANCY CORMIER, is a resident of Eustis, Florida and ex-wife of Plaintiff, and an actor in this civil rights lawsuit because she was following the current custom of local law and conspired to violate Plaintiff's civil rights.
18. There were no minor children involved in the divorce proceedings and therefore custody and child support were never and are not at issue in this lawsuit.
19. Defendant, ANN V. BUECHLER, is a resident of Eustis, Florida and mother of Defendant, NANCY CORMIER; Defendant ANN V. BUECHLER enjoined the state lawsuit against Plaintiff at time of final judgment in Georgia on August 1, 2005, and was following current custom of local law, and she is therefore an actor in this civil rights lawsuit.

20. Defendant, FRANK D. HORKAN, is a Colquitt County Superior Court Judge, presiding in more than one county, and a long-time business and law partner of Defendant, DWIGHT MAY; Defendant FRANK D. HORKAN resides in Moultrie, Georgia, and is an actor in this civil rights lawsuit.
21. Defendant, DWIGHT MAY, was an attorney of Defendant, NANCY CORMIER, while also acting as treasurer and campaign manager for Defendant, FRANK D. HORKAN, during his re-election campaign and during state court proceedings and a Federal removal from May to July, 2005, and he is therefore an actor in this civil rights lawsuit.
22. Besides their political entanglements, Defendants FRANK D. HORKAN and DWIGHT MAY have been business and law partners for over 20 years, and have established a pattern of quid pro quo behavior during judicial proceedings by conspiring to violate Plaintiff's constitutional rights and protections.
23. Defendant FRANK D. HORKAN intentionally refused to disclose his financial and political relationship of over 20 years with Defendant DWIGHT MAY to Plaintiff or his counsel at any time during the course of the state trial, nor during the Federal removal in 2005, nor during the subsequent appeal to the Georgia Supreme Court nor at any other time whatsoever.

24. Defendant, GEORGE ERVIN "SONNY" PERDUE III, is the Governor of Georgia, who resides in Atlanta, Georgia, and is the responsible party for *ultra vires* actions on the part of state judges and other public officials presiding in more than one county; Defendant, GEORGE "SONNY" PERDUE, is therefore an actor in this civil rights lawsuit.
25. JOHN B. ALDERMAN is the chairman of the Colquitt County Commissioners and he is an actor in this civil rights lawsuit because he represents COLQUITT COUNTY, GEORGIA, and is the responsible party for providing judicial services to Defendant, Judge FRANK D. HORKAN, during his *ultra vires* conduct and deprivation of Plaintiff's constitutional and civil rights thereafter.
26. COLQUITT COUNTY, GEORGIA, is an actor in this civil rights lawsuit because it lacks Eleventh Amendment immunity and provided essential judicial services for Defendant Judge FRANK D. HORKAN, during his *ultra vires* conduct, and furnished the Defendants with law enforcement and imprisonment facilities under color of law to implement wrongful alimony-peonage contracts in violation of Federal law.
27. Defendant FRANK D. HORKAN repeatedly threatened to have Plaintiff arrested and jailed beginning with hearing of March 8, 2005 if Plaintiff ever exercised his constitutional rights by removing his case to Federal court, thereby depriving Plaintiff under duress of his

constitutional rights to Due Process and Equal Protection under both Georgia and U.S. Constitutions.

28. Defendant FRANK D. HORKAN repeatedly issued ultra vires orders outside his judicial capacity during a Federal removal from May to July, 2005 and proceeded with a state trial during that time by conducting and scheduling hearings in violation of 28 U.S.C. §§ 1446-7 thereby conspiring to deprive Plaintiff of his constitutional rights to Due Process and Equal Protection.
29. Defendant FRANK D. HORKAN refused to allow Plaintiff to question his ex-wife regarding her desertion at state trial hearing of March 8, 2005 to demonstrate her ineligibility for alimony under O.C.G.A. 19-6-1, because Defendant FRANK D. HORKAN stated that it was too stressful for her, thereby depriving Plaintiff of his rights to Due Process and Equal Protection and exhibiting flagrant gender bias.
30. Both Defendants FRANK D. HORKAN and DWIGHT MAY were made aware that Defendant FRANK D. HORKAN was proceeding illegally in a "rush to judgment", and in violation of 28 U.S.C. § 1446, from May to July, 2005, because three Writs of Mandamus were submitted to the state court by Plaintiff on July 5, 2005 with copies to the Federal District Court and the Georgia Supreme Court.
31. Defendants, FRANK HOKAN and DWIGHT MAY have established a pattern of corrupt quid

pro quo activities whereby Defendant FRANK D. HORKAN ruled exclusively in favor of Defendant DWIGHT MAY and his client, Defendant NANCY CORMIER, in the collection of unlawful debts, during the entire course of the state trial in exchange for election-campaign and business services thereby depriving Plaintiff of his rights to Due Process and Equal Protection.

32. In his June 14, 2005 *ultra vires* order, Defendant FRANK D. HORKAN unlawfully granted money to Defendant DWIGHT MAY, which was also issued in violation of Georgia Superior Court Rules §24.2. "Financial data required", prohibiting awards of attorney's fees unless a financial affidavit has been entered by both parties, even though no affidavits had ever been entered.
33. Defendant FRANK D. HORKAN refused to rule on a Motion for New Hearing after final judgment hearing of August 1, 2005, despite numerous errors and conflicts of interest by Defendants FRANK D. HORKAN and DWIGHT MAY, thereby depriving Plaintiff of his rights to Due Process and Equal Protection and to a fair trial.
34. The Georgia Supreme Court erroneously ruled on June 26, 2006 that a state judge does not need to obey Federal law and need not be compelled to halt a state trial during a valid Federal removal in violation of 28 U.S.C. § 1446 and in direct contradiction to the recent U.S. Supreme Court decision in Howlett v.

Rose, 496 U.S. 356 (1990) wherein the Justices held that all state officials, including state judges, must obey Federal law.

35. On October 5, 2007, Defendants attempted to pursue Plaintiff across state lines to enforce unlawful forced-labor and alimony-peonage contracts and collection of unlawful debts against Plaintiff by using an order to domesticate the final judgment of the Georgia state court in Virginia in violation of the Federal Anti-Peonage Statutes and Federal RICO statutes.

STATEMENT OF PROCEEDINGS

36. On April 22, 2004, Plaintiff filed a Motion for Declaratory Judgment in Federal District Court on, Case #6:04-CV-19, to review the constitutionality of the Georgia Alimony Statutes as impermissibly infringing the Privacy provisions of the 14th Amendment.
37. On May 25, 2004 an *in camera* proceeding was held in the Superior Court of Colquitt County whereupon a Motion for Revision of Alimony for the November 19, 2003 order was denied by Defendant, FRANK D. HORKAN, in the presence of Defendant, DWIGHT MAY, without reasoned opinion thereby continuing an unlawful alimony-peonage contract against Plaintiff and depriving Plaintiff of his Due Process and Equal Protection rights.
38. On June 21, 2004, Plaintiff removed the state court proceeding to United States District

Court for the Middle District of Georgia, Cormier v. Cormier, Civil Action #6:04-CV-30, making a Federal Court challenge to the constitutionality of the Georgia Alimony Statutes as violative of the Federal and Georgia constitutional Right to Privacy inter alia, and due to a Liberty Interest because Defendants had threatened to jail Plaintiff for his Federal constitutional challenge.

39. On November 15, 2004, the United States District Court for the Middle District of Georgia rendered an order remanding the aforesaid Federal case to state court under a Younger abstention due to an ongoing state case.
40. On February 17, 2005, Plaintiff filed a Motion for Declaratory Judgment in the state court to challenge the constitutionality of the Georgia Alimony Statutes as impermissibly infringing the Privacy provisions of the 14th Amendment, and reserving his federal claims by asserting a Jennings-England reservation, while raising state constitutional claims for consideration by the trial court.
41. Defendant FRANK D. HORKAN repeatedly obstructed testimony from Defendant, NANCY CORMIER, as indicated in transcript, concerning her desertion of Plaintiff during hearing of March 8, 2005, which was key in determining eligibility of Defendant, NANCY CORMIER, under O.C.G.A. § 19-6-1.
42. During the hearing of March 8, 2005, and on numerous occasions thereafter, Defendant

FRANK D. HORKAN exhibited flagrant gender bias by stating that it was "too stressful" for Defendant, NANCY CORMIER, to testify about her desertion of Plaintiff, nor was she ever compelled to obtain employment, thereby violating and impermissibly infringing Plaintiff's rights to Due Process and Equal Protection under the Fifth and Fourteenth Amendments to the U.S. Constitution.

43. After hearing of March 8, 2005, Defendant FRANK D. HORKAN repeatedly refused to compel Defendant, NANCY CORMIER, to produce any documentation regarding her assets or interests in the ANN V. BUECHLER TRUST fund, or regarding the payment of an alleged mortgage thereby violating and impermissibly infringing Plaintiff's right to Due Process and Equal Protection under the Fifth and Fourteenth Amendments to the U.S. Constitution, and further exhibiting gender bias against Plaintiff.

44. During the hearing on March 8, 2005, Defendant, Judge FRANK D. HORKAN, ordered the court reporter to go off-record, as indicated in transcript, and used this opportunity to threaten the Plaintiff with imprisonment if the Plaintiff exercised his constitutional right and removed his case to United States District Court; this threat was made in the presence of the court clerk, the court reporter, a deputy sheriff, a reporter for the Moultrie Observer, and spectator's in the court's gallery.

45. On March 25, 2005, Defendant, FRANK D. HORKAN, with ex-parte assistance from Defendant, DWIGHT MAY, summarily overruled and denied Plaintiff's Declaratory Judgment Motion challenging the constitutionality of Georgia's Alimony Statutes without reasoned opinion thereby making declaratory relief unavailable.
46. Moreover, on March 25, 2005, Defendant FRANK D. HORKAN with ex-parte consultation of Defendant, DWIGHT MAY, issued a finding of contempt against Plaintiff for not transferring furniture to Defendant, NANCY CORMIER, per his earlier order, despite evidence to the contrary, thereby exhibiting flagrant gender bias and depriving Plaintiff of his Due Process and Equal Protection rights.
47. Without any evidence or a finding of ability to pay, on March 25, 2005, Defendant FRANK D. HORKAN, with ex-parte assistance from Defendant, DWIGHT MAY, ordered incarceration of Plaintiff if he did not pay attorney fees and other unlawful debts levied against him in the contempt order within 15 days from said date under threats of false imprisonment of Plaintiff to wrongfully and under duress, coerce Plaintiff into an unlawful alimony-peonage contract and payment of unlawful debts.
48. On April 11, 2005, Plaintiff filed an Application for Discretionary Appeal before the Georgia Supreme Court, pursuant to the Family Law

Project, Divorce/alimony Project, to challenge errors by the lower state court and review his Motion for Declaratory Judgment, due to numerous errors by Defendant FRANK D. HORKAN, including gender bias, and for impermissible constitutional infringements arising from the Georgia Alimony Statutes.

49. The Georgia Supreme Court declined to review Plaintiff's Application for Appeal on May 12, 2005 without reasoned opinion thereby making declaratory relief unavailable and forcing Plaintiff into a wrongful alimony-peonage contract under duress and threats of false imprisonment to collect an unlawful debt, and further depriving him of his Due Process and Equal Protection rights.
50. On May 24, 2005, having exhausted his state court remedies, Plaintiff re-removed the issues and claims surrounding his Motion for Declaratory Judgment, involving a Liberty Interest and a constitutional challenge to the Georgia Alimony Statutes O.C.G.A. §§ 19-6-1 et seq, to the United States District Court, Middle District of Georgia, Case #6:05-CV-26, having previously reserved his constitutional claims by asserting a Jennings-England reservation.
51. In the official election Campaign Contribution Disclosure Report, signed, notarized and dated on July 11, 2005 by Defendant, FRANK D. HORKAN, for the Georgia State Election Board, Defendant, DWIGHT MAY, was designated his re-election treasurer and campaign manager during Defendant FRANK

D. HORKAN's re-election for Superior Court Judge, which all Defendants failed to disclose to Plaintiff at that time, or at any time thereafter.

52. While the state case was under removal to Federal Court, the state trial-court judge, Defendant FRANK D. HORKAN, issued without jurisdiction an *ultra vires* ex parte order on June 14, 2005, in violation of 28 U.S.C. § 1446, declaring that he was not bound by Federal Law and that he would, in "a rush to judgment", unlawfully proceed with the state case during said Federal removal.
53. During said ex-parte hearing on June 14, 2005, Defendant, FRANK D. HORKAN, did further wrongfully and illegally issue an *ultra vires* order for Plaintiff to pay an unlawful debt to opposing counsel, Defendant DWIGHT MAY, sums of money in excess of $3,000 during a proper removal to Federal court and in violation of Federal RICO Statutes, thereby depriving Plaintiff of his Due Process and Equal Protection rights as well.
54. Defendants FRANK D. HORKAN and DWIGHT MAY also conspired to make *ultra vires* state court awards on June 14, 2005, to the detriment of Plaintiff and during a proper Federal removal, and without benefit of a financial affidavit, thereby depriving Plaintiff of his Due Process and Equal Protection rights.
55. On July 5, 2005, Plaintiff petitioned state trial court with a Writ of Mandamus to advise the trial court to conform to Federal Statutes,

whereupon Plaintiff also submitted concurrent Writs of Mandamus to the Georgia Supreme Court and to the Federal District Court; however Defendant, FRANK D. HORKAN, refused to review or rule upon nor to comply with said Writ of Mandamus thereby depriving Plaintiff his rights to Due Process, Equal Protection and to a fair trial.

56. A second ex-parte, *ultra vires* hearing was held on July 7, 2005 by Defendants FRANK D. HORKAN and DWIGHT MAY, who conspired to illegally proceed with state trial despite an ongoing Federal removal, and to schedule a final judgment hearing on August 1, 2005 without affording Plaintiff his rights to Due Process and Equal Protection or to a fair trial.
57. On July 11, 2005 the Federal District Court partially remanded said removed Federal case to the state trial court. A second remand was issued by Judge Sands of the Federal District Court to deny Plaintiff's Motion to Deny Remand and Writ of Mandamus because they were moot on July 13, 2005.
58. Defendant, FRANK D. HORKAN, ignored and refused to review Plaintiff's Motion to Recuse on July 25, 2005 due to his errors and prejudicial *ultra vires* conduct and because Defendants had been named in a previous Federal lawsuit challenging judicial errors and constitutionality of the Georgia Alimony Statutes, plus the Defendants' oppressive use of an alimony-peonage contract under color of law and under duress, thereby denying

Plaintiff his rights to a fair trial and impermissibly infringing his rights to Due Process and Equal Protection.

59. On July 25, 2005, Plaintiff submitted a Notice of Appeal for remand of removal by the Federal District Court, Case # 6:05-CV-26 (WLS), to the U.S. Court of Appeals, Case #05-14239-JJ.
60. On August 1, 2005, Defendant, FRANK D. HORKAN, proceeded with an ex parte hearing during the pendency period of the Federal removal, and despite lack of proper notice and conflict of interest with his business and political crony, Defendant DWIGHT MAY, thereby denying Plaintiff his rights to Due Process and Equal Protection, and further violating Federal RICO statutes.
61. At the ex parte state hearing of August 1, 2005, Defendant FRANK D. HORKAN issued a final decree of monetary awards and permanent alimony against Plaintiff, and subsequently ruled on August 3, 2005, that Plaintiff must pay an unlawful debt in the amount of $50,000 to Defendant, NANCY CORMIER, $5,000 to Defendant, ANN V. BUECHLER, and all attorney's fees and permanent alimony in the amount of $2,500 per month under duress and threats of false imprisonment without giving the Plaintiff opportunity to review alleged evidence of debts, thereby depriving Plaintiff of his rights to Due Process and Equal Protection and benefit to a fair trial.
62. Final decree of August 1, 2005, forced Plaintiff into a perpetual alimony-peonage contract in

violation of the Federal Anti-Peonage statutes, 42 U.S.C. 1994 et seq and impermissibly infringing the Thirteenth Amendment of the U.S. Constitution as well as Article I, Section I, Paragraph XXII of the Georgia Constitution, under duress and threats of false imprisonment and in violation of U.S. Supreme Court rulings in US v Kozminski and Bailey v Alabama, plus additional violations and impermissible infringements of Article I, Section I, Paragraph XXIII of the Georgia Constitution prohibiting Debtor's Prison.

63. Plaintiff was also ordered in final decree of August 1, 2005 to unlawfully assume all debts of the marriage under coercion and without equitable distribution, thereby depriving Plaintiff of his rights to Due Process and Equal Protection and discriminating against Plaintiff through blatant gender bias.
64. As a further consequence of the final decree of August 1, 2005, Plaintiff was required to assume responsibility of over $150,000 in marital debt, most of which had been incurred for the benefit of the Defendant, NANCY CORMIER, under duress and threats of false imprisonment, thereby depriving Plaintiff the benefit of his Due Process and Equal Protection rights and forcing him into an unlawful alimony-peonage adhesion contract in violation of the Federal Anti-Peonage Statutes as well as discriminating against Plaintiff through gender bias.

65. Plaintiff was unable to attend final hearing on August 1, 2005 because it was within the pendency period for remanded Federal case, plus Plaintiff was under sanction by the state court for immediate incarceration for exercising his constitutional right of proper removal of the state case to the Federal District Court, and for inability to pay alimony-peonage arrearages, thereby making Due Process, Equal Protection rights and freedom from Involuntary Servitude and Peonage impossible as well as denying Plaintiff a fair trial.
66. Although Plaintiff submitted a Motion for Re-Hearing of Final Decree on August 9, 2005, based upon numerous errors by state trial court and *ultra vires* conduct by Defendants FRANK D. HORKAN and DWIGHT MAY, the state trial court refused to rule on said motion thereby depriving Plaintiff of his Due Process and Equal Protection rights, and right to a fair trial.
67. On August 31, 2005, Plaintiff submitted an Application for Appeal of Final Decree ruling of August 1, 2005 to the Georgia Supreme Court, and on September 29, 2005, Plaintiff was granted an appeal by the Georgia Supreme Court.
68. However, the Georgia Supreme Court erroneously ruled on June 26, 2006 in Cormier v Cormier, Case# S06F0442, that a state judge was not required to obey Federal law, specifically alluding to Defendant Judge FRANK D. HORKAN's flagrant violation of 28

U.S.C. § 1446 by proceeding with the State case during a valid and proper Federal removal:

> "On June 13, 2005, the trial court entered an order denying Husband's second effort to remove the case to federal court, which informed all parties that the case would proceed to a pre-trial hearing on July 7, 2005, and that the trial would be held on August 1, 2005, in the Colquitt County Courthouse."

69. Neither Defendant FRANK D. HORKAN nor Defendant DWIGHT MAY disclosed at any time to Plaintiff nor to counsel, Mr. Stephen Mackie, their political connections, nor did they disclose their political ties during a subsequent appeal to the Georgia Supreme Court which rendered its decision on June 26, 2006, Case #S06F0442.
70. On October 5, 2007, Defendants obtained an order to domesticate the Georgia final judgment order of August 1, 2005 to Virginia, thereby engaging in unlawful interstate trafficking of forced-labor and alimony-peonage contracts under coercion, duress and threats of false imprisonment, and under color of law in further violation of the Federal Anti-Peonage Statutes and Federal RICO Statutes.

STATEMENT OF CLAIMS: COUNTS

Count I – Impermissible Infringement of Due

Process Provisions of the Fifth Amendment and Violation of Civil Rights Thereunder (as to all defendants)

71. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 70 inclusive.
72. Defendants deliberately and with malice deprived Plaintiff of his procedural and substantive Due Process rights by not allowing key evidence and testimony to be entered and heard as well as obstructing efforts to obtain evidence by discovery from Defendants, and therefore willfully deprived Plaintiff of a fair trial.
73. Further, Defendants impermissibly infringed on Plaintiff's constitutional rights by the taking of liberty and property without the benefit of any procedure or substantive Due Process, McCarthy v. Arndstein, 266 U.S. 34 (1924).

Count II – Impermissible Infringement of the Thirteenth Amendment and Violation of Civil Rights Thereunder (as to all Defendants)

74. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 73 inclusive.
75. By conspiring to forever force, compel and otherwise obligate Plaintiff into involuntary servitude, indenture and perpetual peonage, under duress and threats of false imprisonment, for the benefit of Defendant, NANCY CORMIER, and monetary gain of all

Defendants, under color of law, Defendants have impermissibly infringed and violated Plaintiff's 13th Amendment constitutional rights to freedom from Involuntary Servitude.

76. Defendants have conspired to coerce and force Plaintiff into perpetual bankruptcy, involuntary servitude, indentured servitude and peonage through their unlawful, wrongful and *ultra vires* conduct under color of law, and for the collection of unlawful debts thereby impermissibly infringing the 13th Amendment of the U.S. Constitution and Art I Sec I Paragraph XXII of the Georgia Constitution, as well as violating the Federal RICO Statutes.

Count III – Impermissible Infringement and Violation of the Due Process, Equal Protection, and Privacy Provisions of the Fourteenth Amendment (as to all Defendants)

77. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 76 inclusive.
78. The Defendants took from Plaintiff, individually and collectively conspired to deprive Plaintiff of his Due Process, Equal Protection and Privacy rights under provisions of the Fourteenth Amendment, and to deprive Plaintiff of certain property rights without the benefit of procedural or substantive Due Process, all under color of law.
79. Defendants individually and severally impermissibly infringed and violated Plaintiff's

rights to freedom from Gender Bias guaranteed under the Equal Protection provisions of the 14th Amendment and reaffirmed by U.S. Supreme Court decision in Orr v. Orr, 440 U.S. 268 (1979) and Stanton v. Stanton, 429 U.S. 501 (1977).

Count IV - Violation of 42 U.S.C. § 1982 (as to all Defendants)

80. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 79 inclusive.
81. Defendants deprived Plaintiff of his property rights and any future rights of conveyance.

Count V - Violation of 42 U.S. C. § 1983 (as to all Defendants)

82. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 81 inclusive.
83. Defendants, as state actors, demonstrated *ultra vires* conduct, under the color of state law, which was sufficiently willful and reckless, while acting and engaging in official state actions with callous indifference, wanton malevolence, malice, and with intentional gross negligence, within the scope of their official duties, violated Plaintiff's civil and constitutional rights, thereby causing irreparable financial harm to Plaintiff.
84. Defendants willfully impeded and otherwise obstructed, under color of law, all of Plaintiff's

efforts to seek declaratory relief for violations of his civil and constitutional rights.

85. Defendants repeatedly impeded and otherwise obstructed Plaintiff's right to a fair trial and to his constitutional Due Process, Equal Protection and Privacy rights through oppressive application of the Georgia Alimony Statutes, O.C.G.A. §§ 19-6-1 et seq.
86. Defendants discriminated against Plaintiff based upon his gender, under color of law, and thereby deprived him of his constitutional Due Process and Equal Protection rights.

Count VI -Violation of 42 U.S.C. § 1985 (as to all Defendants)

87. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 86 inclusive.
88. Defendants, willfully and wantonly, directly or indirectly, in whole or in part, did with unqualified deliverance, conspire to deprive Plaintiff of his inherent constitutional rights and privileges, thus causing him irreparable harm.

Count VII -Violation of Federal Anti-Peonage Statutes, 42 U.S.C. § 1994 et seq. (as to all Defendants)

89. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 88 inclusive.

90. Defendants conspired to deliberately, willfully and actively violate the Federal Anti-Peonage Statutes, 42 U.S.C. § 1994 and 18 U.S.C. §§ 1581 et seq by repeatedly attempting to maliciously coerce and force Plaintiff into illegal alimony-peonage contracts through oppressive abuse and misuse of the Georgia Alimony Statutes, O.C.G.A. §§ 19-6-1 et seq, under duress and threats of false imprisonment and debtor's prison, under color of law, for the collection of unlawful debts.

Count VIII - Violation of Federal and Georgia RICO Statutes (as to all Defendants)

91. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 through 90 inclusive.
92. Defendants engaged in a pattern of unfair, deceptive and fraudulent acts under color of law to coerce and extort money and property, in collection of unlawful debts from Plaintiff through wrongful, abusive and oppressive misuse of the Georgia Alimony Statutes, O.C.G.A. §§ 19-6-1 et seq in an arbitrary and malicious manner for monetary benefit of Defendants thereof.
93. Defendants repeatedly violated Federal RICO statutes 18 U.S.C. §§ 1951 et seq for purposes of extortion and peonage under color of law through oppressive misuse of the Georgia Alimony Statutes and for collection of unlawful debts.

94. Defendants' conduct has an extortionate quality that gives it the rancid flavor of unfairness.
95. Defendants attempted to enforce collection of unlawful debts through duress and wrongful alimony-peonage contracts, under color of law, across state lines.

Count IX - Intentional Infliction of Emotional Distress (as to all Defendants)

96. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 though 95 inclusive.
97. By Defendants intentionally and maliciously depriving Plaintiff of his constitutional rights, they have intentionally inflicted emotional distress on him.
98. Plaintiff has suffered severe emotional distress caused by Defendants forcing him into an illegal alimony-peonage contract and perpetual bankruptcy, entirely against his will, under color of law, and causing him irreparable financial harm.
99. Defendants' actions have alienated affection of Plaintiff's children causing him severe emotional distress and egregious harm.

Count X - Tortous Interference with Economic Advantage (as to all Defendants)

100. Plaintiff repeats the allegations set forth and incorporates by reference herein the above paragraphs 1 though 99 inclusive.
101. Defendants, in an arbitrary and capricious manner and with malicious intent, have deprived and interfered with Plaintiffs economic advantage causing him irreparable financial harm.
102. Defendants are therefore liable to Plaintiff for all the damages that follow as a natural consequence of their actions and are the proximate result of their conduct.
103. Defendants breached their special relationship and fiduciary responsibility as public officials charged with obeying the laws of the State of Georgia and of the United States as well as the Georgia Code of Judicial Conduct, causing Plaintiff irreparable harm, and therefore are liable to Plaintiff for all the damages that follow as a natural consequence of their actions.

PLAINTIFF'S ENTITLEMENT TO RELIEF

WHEREFORE: The Plaintiff claims irreparable harm caused by Defendants and claims damages against Defendants individually and severally in an amount to be determined at trial in excess of $1,000,000, plus costs, and for any further relief that this Honorable Court determines necessary and appropriate as follows:

1. Enjoin Defendants from any further statutory or constitutional violations;

2. Order injunctive relief and declaratory judgment;

3. Order an injunction against Defendant Judge FRANK D. HORKAN to halt further state court orders, to set aside all current state court orders, and to bar Defendants from any further statutory or constitutional violations;

4. Order that Final Judgment of the Georgia Colquitt County Superior Court be set aside and that Plaintiff be awarded punitive and compensatory damages in excess of $1,000,000;

5. Award monetary, retroactive, and prospective equitable relief to Plaintiff;

6. Disallow Defendants invocation of their Eleventh Amendment and qualified immunity shield under the *Ex Parte Young Doctrine* and pursuant to aforementioned case law cited herein;

7. Award court costs and attorney fees;

8. Order other relief that may be deemed just and proper by this Court.

Furthermore, Plaintiff hereby requests a jury trial on all issues so triable.

Dated: May 29, 2009

Respectfully Submitted,
/s/ - Denny C. Cormier

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